code of federal regulations

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Judicial Administration

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ORIGINAL

28

Revised as of July 1, 1982

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code of federal regulations

Judicial Administration

28

Revised as of July 1, 1982

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Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, July 1, 1982), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to take steps to reduce the Federal paperwork burden for individuals, small businesses and State and local governments, as well as to maximize the usefulness of information collection. One specific requirement of the Act is for Federal agencies to display an OMB control number with the information collection request.

Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

INCORPORATION BY REFERENCE

What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

What is a proper incorporation by reference? The Director of the Federal Register will approve an incorporation by reference only when the requirements of 1 CFR Part 51 are met. Some of the elements on which approval is based are:

(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR 51.4.

Properly approved incorporations by reference in this volume are listed in the Finding Aids at the end of this volume.

What if the material incorporated by reference cannot be found? If you have any problem locating or obtaining a copy of material listed in the Finding Aids of this volume as an approved incorporation by reference, please contact the agency that issued the regulation containing that incorporation. If, after contacting the agency, you find the material is not available, please notify the Director of the Federal Register, National Archives and Records Service, Washington DC 20408, or call (202) 523-4534.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of Presidential documents appears at the end of each compilation of Title 3, The President.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

JOHN E. BYRNE,
Director,
Office of the Federal Register.

July 1, 1982.

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(1964 through 1972)

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THIS TITLE

Title 28—JUDICIAL ADMINISTRATION is composed of one volume. The contents of this volume represent all current regulations codified under this title of the CFR as of July 1, 1982.

For this volume, Mildred L. Isler was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509, 510, unless otherwise noted.

SOURCE: Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 445-70, 35 FR 19397, Dec. 23, 1970, unless otherwise noted.

Subpart A—Organizational Structure of the Department of Justice

§ 0.1 Organizational units.

The Department of Justice shall consist of the following principal organizational units:

Offices

Office of the Attorney General.
Office of the Deputy Attorney General.
Office of the Associate Attorney General.
Office of the Solicitor General.
Office of Legal Counsel.
Office of Legislative Affairs.
Office of Professional Responsibility.
Office of Legal Policy.
Office of Public Affairs.
Office of the Pardon Attorney.
Office of Intelligence Policy and Review.
Community Relations Service.
Executive Office for United States Attorneys.
Executive Office for United States Trustees.
INTERPOL—United States National Central Bureau.

Divisions

Antitrust Division.
Civil Division.
Civil Rights Division.
Criminal Division.
Land and Natural Resources Division.
Tax Division.
Justice Management Division.

Bureaus

Federal Bureau of Investigation.
Bureau of Prisons.
Drug Enforcement Administration.
Immigration and Naturalization Service.
Office of Justice Assistance, Research and Statistics (and related agencies).
United States Marshals Service.

Boards.

Board of Immigration Appeals.
United States Parole Commission.
Foreign Claims Settlement Commission.

[Order No. 900-80, 45 FR 43702, June 30, 1980, as amended by Order No. 960-81, 46 FR 52340, Oct. 27, 1981]

Subpart B—Office of the Attorney General

§ 0.5 Attorney General.

The Attorney General shall:

(a) Supervise and direct the administration and operation of the Department of Justice, including the offices of U.S. Attorneys and U.S. Marshals, which are within the Department of Justice.

(b) Represent the United States in legal matters generally.

(c) Furnish advice and opinions, formal and informal, on legal matters to the President and the Cabinet and to the heads of the executive departments and agencies of the Government, as provided by law.

(d) Appear in person to represent the Government in the Supreme Court of the United States, or in any other court, in which he may deem it appropriate.

(e) Designate, pursuant to Executive Orders No. 9788 of October 4, 1946, and No. 10254 of June 15, 1951, officers and agencies of the Department of Justice to act as disbursing officers for the Office of Alien Property.

(f) Perform or supervise the performance of other duties required by statute or Executive order.

§ 0.10 Attorney General's Advisory Committee of United States Attorneys.

(a) The Attorney General's Advisory Committee of United States Attorneys shall consist of fifteen United States Attorneys, designated by the Attorney General. The membership shall be selected to represent the various geographic areas of the Nation and both large and small offices. Members shall serve at the pleasure of the Attorney General, but such service normally shall not exceed three years and shall be subject to adjustment by the Attorney General so as to assure the annual rotation of approximately one-third of the Committee's membership.

(b) The Committee shall make recommendations to the Attorney General, to the Deputy Attorney General and to the Associate Attorney General concerning any matters which the Committee believes to be in the best interests of justice, including, but not limited to, the following:

(1) Establishing and modifying policies and procedures of the Department;

(2) Improving management, particularly with respect to the relationships between the Department and the United States Attorneys;

(3) Cooperating with State Attorneys General and other State and local officials for the purpose of improving the quality of justice in the United States;

(4) Promoting greater consistency in the application of legal standards throughout the Nation and at the various levels of government; and

(5) Aiding the Attorney General, the Deputy Attorney General and the Associate Attorney General in formulating new programs for improvement of the criminal justice system at all levels, including proposals relating to legislation and court rules.

(c) The Committee shall select from its membership a chairman, a vice-chairman and a secretary, and shall establish such subcommittees as it deems necessary to carry out its objectives. United States Attorneys who are not members of the Committee may be included in the membership of subcommittees.

(d) The Executive Office for United States Attorneys shall provide the Committee with such staff assistance and funds as are reasonably necessary to carry out the Committee's responsibilities.

[Order No. 640-76, 41 FR 7748, Feb. 20, 1976, as amended by Order No. 960-81, 46 FR 52340, Oct. 27, 1981]

§ 0.11 Incentive Awards Board.

The Incentive Awards Board shall consist of the Deputy Attorney General or a designee of the Deputy Attorney General, who shall be the chairperson, and four members designated by the Attorney General from among the Assistant Attorneys General, bureau heads or persons of equivalent rank in the Department. The duties of the Board shall be:

(a) Consider and make recommendations to the Attorney General concerning honorary awards and cash awards in excess of $5,000 to be granted for suggestions, inventions, superior accomplishment, or other personal effort which contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork.

(b) Consider and make recommendations to the Attorney General for transmittal to the Office of Personnel Management and the President for Presidential awards under 5 U.S.C. 4504 and 5403.

(c) Evaluate periodically the effectiveness of the employee recognition program and recommend needed improvements to the Attorney General.

[Order No. 960-81, 46 FR 52340, Oct. 27, 1981]

§ 0.12 Young American Medals Committee.

There shall be in the Office of the Attorney General a Young American

Medals Committee, which shall be composed of four members, one of whom shall be the Director of Public Affairs who shall be the Executive Secretary of the Committee. The Chairman of the Committee shall be designated by the Attorney General. The Committee shall issue regulations relating to the establishment of the Young American Medal for Bravery and Young American Medal for Service provided for by the act of August 3, 1950, 64 Stat. 397, and governing the requirements and procedures for the award of such medals. The regulations of the Committee in effect on the effective date of this part shall continue in effect until amended, modified, or revoked by the Committee.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445-70, 35 FR 19397, Dec. 23, 1970. Redesignated by Order No. 543-73, 38 FR 29583, Oct. 26, 1973, and further amended by Order No. 960-81, 46 FR 52340, Oct. 27, 1981]

§ 0.13 Legal proceedings.

(a) Each Assistant Attorney General and Deputy Assistant Attorney General is authorized to exercise the authority of the Attorney General under 28 U.S.C. 515(a), in cases assigned to, conducted, handled, or supervised by such official, to designate Department attorneys to conduct any legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, which United States attorneys are authorized by law to conduct, whether or not the designated attorney is a resident of the district in which the proceedings is brought.

(b) Each Assistant Attorney General is authorized to redelegate to Section Chiefs the authority delegated by paragraph (a) of this section, except that such redelegation shall not apply to the designation of attorneys to conduct grand jury proceedings.

[Order No. 725-77, 42 FR 26205, May 23, 1977]

Subpart C—Office of the Deputy Attorney General

§ 0.15 Deputy Attorney General.

(a) The Deputy Attorney General is authorized to exercise all the power and authority of the Attorney General specified in § 0.5 of Subpart B of this part, unless any such power or authority is required by law to be exercised by the Attorney General personally or has been specifically delegated exclusively to another Department official.

(b) The Deputy Attorney General shall advise and assist the Attorney General in formulating and implementing Department policies and programs and in providing overall supervision and direction to all organizational units of the Department. Subject to the general supervision of the Attorney General, the Deputy Attorney General shall direct the activities of the Associate Attorney General and the following organizational units: Office of Legislative Affairs; Justice Management Division; Office of Public Affairs; Antitrust Division; Civil Division; Civil Rights Division; Land and Natural Resources Division; Tax Division; Office of Justice Assistance, Research and Statistics; Community Relations Service; Executive Office for United States Trustees; and United States Trustees. The Foreign Claims Settlement Commission is under the supervision of the Deputy Attorney General for administrative purposes. In addition, the Deputy Attorney General shall:

(1) Except as assigned to the Associate Attorney General by § 0.19(a)(1), exercise the power and authority vested in the Attorney General to take final action in matters pertaining to:

(i) The employment, separation, and general administration of personnel in the Senior Executive Service and in General Schedule grades GS-16 through GS-18, or the equivalent, and of attorneys and law students regardless of grade or pay in the Department;

(ii) The appointment of special attorneys and special assistants to the Attorney General (28 U.S.C. 515(b));

(iii) The appointment of Assistant United States Trustees and fixing of their compensation; and

(iv) The approval of the appointment by United States Trustees of standing trustees and the fixing of their maximum annual compensation and percentage fees as provided in 28 U.S.C. 586(e).

(2) Administer the Attorney General's recruitment program for honor law graduates and judicial law clerks.

(3) Coordinate Departmental liaison with White House Staff and the Executive Office of the President.

(4) Coordinate and control the Department's reaction to civil disturbances and terrorism.

(5) Perform such other duties and functions as may be assigned from time to time by the Attorney General.

(c) The Deputy Attorney General may redelegate the authority provided in paragraphs (b)(1) (i), (ii), and (iii) of this section to take final action in matters pertaining to the employment, separation, and general administration of attorneys and law students in grades GS-15 and below, to appoint special attorneys and special assistants to the Attorney General pursuant to 28 U.S.C. 515(b), and to appoint Assistant United States Trustees and fix their compensation, to the official in the Office of the Deputy Attorney General responsible for attorney personnel management.

(d) The Deputy Attorney General may redelegate the authority provided in paragraph (b)(1)(iv) of this section to take final action in matters pertaining to the approval of the appointment by United States Trustees of standing trustees and the fixing of their maximum annual compensation and percentage fees as provided in 28 U.S.C. 586(e) to the Director of the Executive Office for United States Trustees.

[Order No. 960-81, 46 FR 52340, Oct. 27, 1981]

§ 0.18a Office of Small and Disadvantaged Business Utilization.

The Office of Small and Disadvantaged Business Utilization is headed by a Director appointed by the Attorney General, who shall be responsible to, and report directly to, the Deputy Attorney General. Subject to the general supervision and direction of the Deputy Attorney General, the Director shall:

(a) Be responsible for the implementation and execution of the functions and duties required by sections 637 and 644 of Title 15, United States Code;

(b) Establish Department goals for the participation by small businesses, including small businesses owned and controlled by socially and economically disadvantaged individuals, in Department procurement contracts;

(c) Have supervisory authority over Department personnel to the extent that the functions and duties of such personnel relate to the functions and duties described in paragraph (a) of this section;

(d) Provide resource information and technical training and assistance regarding utilization of small businesses, including small businesses owned and controlled by socially and economically disadvantaged individuals, to Department personnel who perform procurement functions;

(e) Assign a small business technical adviser to any Department offices to which the Small Business Administration assigns a procurement center representative, in accordance with section 644(k)(6) of Title 15, United States Code;

(f) Develop and implement appropriate outreach programs to include small minority businesses in procurement contracts;

(g) Cooperate and consult regularly with the Small Business Administration with respect to the functions and duties described in paragraph (a) of this section;

(h) Review, evaluate and report to the Deputy Attorney General on the performance of organizational units of the Department in accomplishing the goals for utilization of small and disadvantaged businesses; and

(i) Prepare the Department's annual report to the Small Business Administration on the extent of participation by small and disadvantaged businesses in Department procurement contracts.

(28 U.S.C. 509 and 510; 15 U.S.C. 644(k))

[Order No. 906-80, 45 FR 52145, Aug. 6, 1980]

Subpart C-1—Office of the Associate Attorney General

§ 0.19 Associate Attorney General.

(a) The Associate Attorney General shall advise and assist the Attorney General and the Deputy Attorney General in formulating and implementing Departmental policies and programs pertaining to criminal matters. The Associate Attorney General shall also provide overall supervision and direction for the following organizational units: Criminal Division; Drug Enforcement Administration; Immigration and Naturalization Service; Executive Office for United States Attorneys; Bureau of Prisons; Federal Prison Industries, Inc.; Office of Pardon Attorney; Board of Immigration Appeals; United States Marshals Service; and the United States National Central Bureau, INTERPOL. The United States Parole Commission is under the supervision of the Associate Attorney General for administrative purposes. In addition the Associate Attorney General shall:

(1) Exercise the power and authority vested in the Attorney General to take final action in matters pertaining to the employment, separation, and general administration of attorneys and law students in pay grades GS-15 and below in organizational units subject to his direction and of Assistant United States Attorneys and other attorneys to assist United States Attorneys when the public interest so requires and fixing their salaries.

(2) Perform such other duties as may be especially assigned from time to time by the Attorney General.

(b) The Associate Attorney General may redelegate the authority provided in paragraph (a)(1) of this section to the official in the Office of the Deputy Attorney General responsible for attorney personnel management.

[Order No. 960-81, 46 FR 52341, Oct. 27, 1981]

Subpart D—Office of the Solicitor General

§ 0.20 General functions.

The following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Solicitor General, in consultation with each agency or official concerned:

(a) Conducting, or assigning and supervising, all Supreme Court cases, including appeals, petitions for and in opposition to certiorari, briefs and arguments, and, in accordance with § 0.163, settlement thereof.

(b) Determining whether, and to what extent, appeals will be taken by the Government to all appellate courts (including petitions for rehearing *en banc* and petitions to such courts for the issuance of extraordinary writs) and, in accordance with § 0.163, advising on the approval of settlements of cases in which he had determined that an appeal would be taken.

(c) Determining whether a brief *amicus curiae* will be filed by the Government, or whether the Government will intervene, in any appellate court.

(d) Assisting the Attorney General, the Deputy Attorney General and the Associate Attorney General in the development of broad Department program policy.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 960-81, 46 FR 52341, Oct. 27, 1981]

§ 0.21 Authorizing intervention by the Government in certain cases.

The Solicitor General may in consultation with each agency or official concerned, authorize intervention by the Government in cases involving the constitutionality of acts of Congress.

Subpart D-1—Executive Office for U.S. Attorneys

§ 0.22 General functions.

The Executive Office for United States Attorneys shall be under the direction of a Director who shall:

(a) Provide general executive assistance and supervision to the offices of the United States Attorneys, including:

(1) Evaluating the performance of the offices of the United States Attorneys, making appropriate reports and inspections and taking corrective action were indicated.

(2) Coordinating and directing the relationship of the offices of the United States Attorneys with other organizational units of the Department of Justice.

(b) Publish and maintain a United States Attorneys' Manual and a United States Attorneys' Bulletin for the internal guidance of the United States Attorneys' offices and those other organizational units of the Department concerned with litigation.

(c) Supervise the operation of the Office of Legal Education, the Attorney General's Advocacy Institute and the Legal Education Institute, which shall develop, conduct and authorize the training of all Federal legal personnel.

(d) Provide the Attorney General's Advisory Committee of United States Attorneys with such staff assistance and funds as are reasonably necessary to carry out the Committee's responsibilities (28 CFR 0.10(d)).

[Order No. 960-81, 46 FR 52341, Oct. 27, 1981]

Subpart D-2—Office of Legal Policy

§ 0.23 General functions.

The Office of Legal Policy shall be headed by an Assistant Attorney General. The principal responsibilities of the Office shall be to plan, develop, and coordinate the implementation of major policy initiatives of high priority to the Department and to the Administration. In addition, the Assistant Attorney General, Office of Legal Policy, shall:

(a) Examine and study legislation and other policy proposals and coordinate Departmental efforts to secure enactment of those of special interest to the Department and the Administration.

(b) Assist the Attorney General and the Deputy Attorney General in fulfilling responsibilities of the Federal Legal Council to promote coordination and communication among Federal legal offices with the goal of achieving effective, consistent, and efficient management of legal resources throughout the Federal Government.

(c) Manage and coordinate the discharge of Departmental responsibilities related to the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a), including coordination and implementation of policy development and compliance within executive agencies and Departmental units relative to the Freedom of Information Act and within Departmental units relative to the Privacy Act; and, except as otherwise directed by the Attorney General, act on appeals taken from Departmental denials of access to records under the Privacy Act and the Freedom of Information Act.

(d) Advise and assist the Attorney General and the Deputy Attorney General regarding the selection and appointment of Federal judges.

(e) Administer the Federal Justice Research Program.

(f) Represent the Department on the Administrative Conference of the United States and, as appropriate, on regulatory reform matters.

(g) Participate, as appropriate, in internal budget hearings of the Department with regard to policy implications of resource allocations and resource implications of major policy initiatives; and advise the Assistant Attorney General for Administration with regard to information requirements for Departmental policy formulation.

(h) Advise appropriate Departmental officials, from time to time, on investigation, litigation, negotiation, penal, or correctional policies to insure the compatibility of those policies with overall Departmental goals.

(i) Through appropriate participation in meetings or conferences with national, state and local law enforcement and justice system officials, promote the priorities of the Department for the Nation's justice system.

(j) Perform such other duties and functions as may be specially assigned by the Attorney General and the Deputy Attorney General.

In carrying out his responsibilities under this section, the Assistant Attorney General, Office of Legal Policy, shall have the right to call upon the relevent Departmental units for personnel and other assistance.

[Order No. 960-81, 46 FR 52341, Oct. 27, 1981]

§ 0.23a Office of Information and Privacy.

(a) There is established, in the Office of Legal Policy, the Office of Information and Privacy, which, under the general supervision and direction of the Assistant Attorney General, Office of Legal Policy, shall:

(1) Assist in acting on information and privacy appeals under §§ 16.7 and 16.47, respectively, of this chapter, except that in the case of appeals from initial decisions in which the Assistant Attorney General, Office of Legal Policy, participated this assistance shall be provided by the Office of Legal Counsel.

(2) Provide staff support to the Department Review Committee, established by § 17.148 of this chapter.

(3) Advise executive agencies and organizational units of the Department on questions relating to interpretation and application of the Freedom of Information Act and advise the Department on questions relating to interpretation and application of the Privacy Act.

(4) Coordinate the development and implementation of and compliance with Freedom of Information Act policy within the executive agencies and all organizational units of the Department.

(5) Undertake, arrange, or support training and informational programs concerning both acts for the executive agencies and the Department.

(6) Undertake such other responsibilities as may be assigned by the Assistant Attorney General, Office of Legal Policy.

(b) All federal agencies which intend to deny Freedom of Information Act requests raising novel issues should consult with the Office of Information and Privacy to the extent practicable.

[Order No. 973-82, 47 FR 10809, Mar. 12, 1982]

Subpart E—Office of Legal Counsel

§ 0.25 General functions.

The following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General, Office of Legal Counsel:

(a) Preparing the formal opinions of the Attorney General; rendering informal opinions and legal advice to the various agencies of the Government; and assisting the Attorney General in the performance of his functions as legal adviser to the President and as a member of, and legal adviser to, the Cabinet.

(b) Preparing and making necessary revisions of proposed Executive orders and proclamations, and advising as to their form and legality prior to their transmission to the President; and performing like functions with respect to regulations and other similar matters which require the approval of the President or the Attorney General.

(c) Rendering opinions to the Attorney General and to the heads of the various organizational units of the Department on questions of law arising in the administration of the Department.

(d) Approving proposed orders of the Attorney General, and orders which require the approval of the Attorney General, as to form and legality and as to consistency and conformity with existing orders and memoranda.

(e) Except as to proposed legislation, acting in a liaison capacity for cooperation with the Council of State Governments.

(f) Coordinating the work of the Department of Justice with respect to the participation of the United States in the United Nations and related international organizations and advising with respect to the legal aspects of treaties and other international agreements.

(g) When requested, advising the Attorney General in connection with his review of decisions of the Board of Immigration Appeals and other organizational units of the Department.

(h) Designating within the Office of Legal Counsel: (1) A liaison officer, and an alternate, as a representative of the Department in all matters concerning the filing of departmental documents with the Office of the Federal Register, and (2) a certifying officer, and an alternate, to certify copies of documents required to be filed with the Office of the Federal Register (1 CFR 16.1).

(i) Approving certain blind trusts, as required by section 202(f)(4)(B) of the Ethics in Government Act of 1978, 92 Stat. 1843.

(j) Consulting with the Director of the Office of Government Ethics regarding the development of policies, rules, regulations, procedures and forms relating to ethics and conflicts of interest, as required by section 402 of the Ethics in Government Act of 1978, 92 Stat. 1862.

(k) Performing such special duties as may be assigned by the Attorney General, the Deputy Attorney General, or the Associate Attorney General from time to time.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 623-75, 40 FR 42746, Sept. 16, 1975; Order No. 960-81, 46 FR 52342, Oct. 27, 1981]

Subpart E-1—Office of Legislative Affairs

§ 0.27 General functions.

The following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General, Office of Legislative Affairs:

(a) Maintaining liaison between the Department and the Congress.

(b) Reviewing, coordinating and submitting departmental legislative reports.

(c) Coordinating the preparation and submission of proposed departmental legislation.

(d) Performing such other duties respecting legislative matters as may be assigned by the Attorney General, the Deputy Attorney General, or the Associate Attorney General.

[Order No. 504-73, 38 FR 6893, Mar. 14, 1973, as amended by Order No. 623-75, 40 FR 42746, Sept. 16, 1975; Order No. 960-81, 46 FR 52343, Oct. 27, 1981]

Subpart E-2—Office of Public Affairs

§ 0.28 General functions.

The Office of Public Affairs is headed by a Director of Public Affairs who shall:

(a) Handle matters pertaining to relations with the public generally.

(b) Disseminate information to the press, the radio and television services, the public, members of Congress, officials of Government, schools, colleges, and civic organizations.

(c) Coordinate the relations of the Department of Justice with the news media.

(d) Serve as a central agency for information relating to the work and activities of all agencies of the Department.

(e) Prepare public statements and news releases.

(f) Coordinate Department publications.

(g) Assist the Attorney General and other officials of the Department in preparing for news conferences, interviews and other contacts with the news media.

[Order No. 960-81, 46 FR 52343, Oct. 27, 1981]

Subpart F—Community Relations Service

§ 0.30 General functions.

The following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Director of the Community Relations Service:

(a) Exercise of the powers and performance of the functions vested in the Attorney General by sections 204(d), 205, 1002, and 1003(a) of the Civil Rights Act of 1964 (78 Stat. 267) and section 2 of Reorganization Plan No. 1 of 1966.

(b) Preparation and submission of the annual report to the Congress required by section 1004 of that Act.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 960-81, 46 FR 52343, Oct. 27, 1981]

§ 0.31 Designating officials to perform the functions of the Director.

(a) In case of a vacancy in the Office of the Director of the Community Relations Service, the Deputy Director of the Service shall perform the functions and duties of the Director.

(b) The Director is authorized, in case of absence from his office or in case of his inability or disqualification to act, to designate the Deputy Director to act in his stead. In unusual circumstances, or in the absence of the Deputy Director, a person other than the Deputy Director may be so designated by the Director.

§ 0.32 Applicability of existing departmental regulations.

Departmental regulations which are generally applicable to units or personnel of the Department of Justice shall be applicable with respect to the Community Relations Service and to the Director and personnel thereof, except to the extent, if any, that such regulations may be inconsistent with the intent and purposes of section 1003(b) of the Civil Rights Act of 1964.

Subpart F-1—Office of Intelligence Policy and Review

§ 0.33a Organization.

The Office of Intelligence Policy and Review shall be headed by a Counsel for Intelligence Policy, appointed by the Attorney General.

[Order No. 960-81, 46 FR 52343, Oct. 27, 1981]

§ 0.33b Functions.

The Counsel for Intelligence Policy shall:

(a) Advise and assist the Attorney General in carrying out his responsibilities under Executive Order 12036, "United States Intelligence Activities;"

(b) Serve as the Department representative on interdepartmental boards, committees and other groups dealing with intelligence and counterintelligence matters;

(c) Oversee the development, coordination and implementation of Department policy with regard to intelligence, counterintelligence and national security matters;

(d) Participate in the development, implementation and review of United States intelligence policies, including procedures for the conduct of intelligence and counterintelligence activities;

(e) Evaluate Departmental activities and existing and proposed domestic and foreign intelligence and counterintelligence activities to determine their consistency with United States intelligence policies and law;

(f) Formulate policy alternatives and recommend action by the Department and other executive agencies in achieving lawful United States intelligence and counterintelligence objectives;

(g) Analyze and interpret current statutes, Executive orders, guidelines, and other directives pertaining to domestic security, foreign intelligence and counterintelligence activities; and

(h) Review and comment upon proposed statutes, guidelines, and other directives with regard to intelligence activities; and, in conjunction with the Office of Legal Counsel, review and comment upon the form and legality of proposed Executive Orders that touch upon matters related to the function of this Office;

(i) Supervise the preparation of certifications and applications for orders under the Foreign Intelligence Surveillance Act and the representation of the United States before the United States Foreign Intelligence Surveillance Court;

(j) Recommend action by the Department of Justice with regard to applications for foreign intelligence and counterintelligence electronic surveillances, as well as for other investigative activities by executive branch agencies;

(k) Monitor intelligence and counterintelligence activities by executive branch agencies to insure conformity with Department objectives;

(l) Prepare periodic and special intelligence reports describing and evaluating domestic and foreign intelligence and counterintelligence activities and assessing trends or changes in these activities;

(m) Provide a quality control review for all outgoing intelligence and counterintelligence reports;

(n) Supervise the preparation of the Office's submission for the annual budget; and

(o) Perform other duties pertaining to intelligence activities as may be assigned by the Attorney General.

[Order No. 875-80, 45 FR 13729, Mar. 3, 1980, as amended by Order No. 960-81, 46 FR 52343, Oct. 27, 1981]

§ 0.33c Relationship to other departmental units.

(a) Internal security functions at § 0.61 shall continue to be the responsibility of the Assistant Attorney General in charge of the Criminal Division.

(b) The Assistant Attorney General for Administration shall be responsible for providing advice relating to basic Department policy for security and shall direct all Department security programs assigned at § 0.75(p).

(c) Responsibility for conducting criminal investigations shall continue to rest with the head of the Departmental investigative or prosecutive unit having jurisdiction over the subject matter.

(d) Responsibility for conducting intelligence activities shall continue to rest with the head of the Departmental unit having jurisdiction over the subject matter.

(e) In rendering legal opinions, the Counsel for Intelligence Policy shall consult with the Office of Legal Counsel whenever the Counsel determines: (1) That a question raises significant implications for activities of the government other than intelligence activities, or (2) that other facts or circumstances make such consultation appropriate.

[Order 875-80, 45 FR 13729, Mar. 3, 1980]

Subpart F-2—INTERPOL-United States National Central Bureau

§ 0.34 General functions.

The following functions are assigned to, and shall be conducted, handled, or supervised by, the Chief of the United States National Central Bureau, International Criminal Police Organization (INTERPOL—U.S. National Central Bureau), as authorized by statute and within guidelines prescribed by the Department of Justice, in conjunction with the Department of Treasury:

(a) Facilitate international law enforcement cooperation as the United States representative with the International Criminal Police Organization (INTERPOL), on behalf of the Attorney General, pursuant to 22 U.S.C. 263a.

(b) Represent the United States National Central Bureau at criminal law enforcement and international law enforcement conferences and symposia.

(c) Establish and serve as the secretary to a policy advisory group consisting of the designees of the United States Representative to INTERPOL (the Attorney General) and the alternate representative (the Secretary of the Treasury), and of the heads of the participating law enforcement agencies, which will review and develop INTERPOL programs and policies.

(d) Transmit information of a criminal justice, humanitarian, or other law enforcement related nature between National Central Bureaus of INTERPOL member countries, and law enforcement agencies within the United States and abroad; and respond to requests by law enforcement agencies, and other legitimate requests by appropriate organizations, institutions and individuals, when in agreement with the INTERPOL constitution.

(e) Coordinate and integrate information for investigations of an international nature and identify those involving patterns and trends of criminal activities.

(f) Conduct analyses of patterns of international criminal activities, when specific patterns are observed.

[Order No. 960-81, 46 FR 52343, Oct. 27, 1981]

Subpart G—Office of the Pardon Attorney

CROSS REFERENCE: For regulations pertaining to the Office of Pardon Attorney, see Part 1 of this chapter.

§ 0.35 Applications for clemency.

The Pardon Attorney shall have charge of the receipt, investigation, and disposition of applications to the

President for pardon and other forms of Executive clemency.

[Order No. 960-81, 46 FR 52344, Oct. 27, 1981]

§ 0.36 Recommendations.

The Pardon Attorney shall submit all recommendations in clemency cases to the Attorney General.

[Order No. 960-81, 46 FR 52344, Oct. 27, 1981]

Subpart G-1—Executive Office for United States Trustees

§ 0.37 Organization.

The Executive Office for United States Trustees shall be headed by a Director appointed by the Attorney General.

[Order No. 960-81, 46 FR 52344, Oct. 27, 1981]

§ 0.38 Functions.

The Director shall have responsibility for assisting the Attorney General and the Deputy Attorney General in supervising and providing general coordination and assistance to United States Trustees. The Director shall perform such duties relating to such functions and others under the Bankruptcy Reform Act of 1978 as may be assigned by the Attorney General or the Deputy Attorney General.

[Order No. 960-81, 46 FR 52344, Oct. 27, 1981]

Subpart G-2—Office of Professional Responsibility

AUTHORITY: 5 U.S.C. 2303 and 28 U.S.C. 509 and 510.

SOURCE: Order No. 833-79, 45 FR 27754, Apr. 24, 1980, unless otherwise noted.

§ 0.39 Organization.

The Office of Professional Responsibility shall be headed by a Counsel, appointed by the Attorney General. The Counsel shall be subject to the general supervision and direction of the Attorney General or, whenever appropriate, of the Deputy Attorney General or the Associate Attorney General or the Solicitor General.

§ 0.39a Functions.

The Counsel on Professional Responsibility shall:

(a) Receive and review any information or allegation concerning conduct by a Department employee that may be in violation of law, regulations or orders, or of applicable standards of conduct or may constitute mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. However, this provision does not preempt the primary responsibility of internal inspection units of the Department to receive such information or allegations and to conduct investigations.

(b) Receive and review any allegation of reprisal against an employee or applicant who discloses information pursuant to paragraph (a) of this section. Any disclosure by an employee or applicant to the appropriate internal inspection unit of the Department under this subsection shall constitute disclosure to the Attorney General or the Counsel.

(c) Make such preliminary inquiry as may be necessary to determine whether the matter should be referred to another official within the Department.

(d) Refer any matter that appears to warrant examination in the following manner:

(1) If the matter appears to involve a violation of law, to the head of the investigative agency having jurisdiction to investigate such violations;

(2) If the matter appears not to involve a violation of law, to the head of the office, division, bureau or board to which the employee is assigned, or to the head of its internal inspection unit;

(3) If referral to the official indicated in paragraph (d)(1) or (2) of this section would be inappropriate, to the Attorney General and the Deputy Attorney General or, if referral to both the Attorney General and the Deputy Attorney General would also be inappropriate, to whichever of them would be proper or to the Associate Attorney General or the Solicitor General.

(e) *Receive.* (1) Reports containing the findings of any investigation undertaken upon matters referred under paragraph (d)(2) of this section and the administrative sanction to be imposed, if any sanction is warranted; and

(2) Monthly reports from the internal inspection units setting forth any information or allegations received pursuant to paragraph (a) or (b) of this section and the status of any pending investigations.

(f) Notify within a reasonable period of time any person who has submitted information or made allegations pursuant to paragraph (a) or (b) of this section of the final result of any investigation undertaken: *Provided*, That such notification is permitted by and accords with applicable statutes and regulations.

(g) Recommend to the Attorney General, the Deputy Attorney General, the Associate Attorney General, or the Solicitor General what further action should be undertaken with regard to any matter referred to such official under paragraph (d)(3) of this section, including the assignment of any task force or individual to undertake the action recommended and any special arrangements that appear warranted.

(h) Undertake any investigation of a matter referred under paragraph (d)(3) of this section that may be assigned by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or the Solicitor General, or cooperate with any other organization, task force, or individual that may be assigned by such official to undertake the investigation.

(i) Submit to the Attorney General and the Deputy Attorney General or, if submission to both would be inappropriate, to whichever of them would be proper or to the Associate Attorney General or the Solicitor General:

(1) An immediate report concerning any matter referred under paragraph (d)(1) or (d)(2) of this section that should be brought to the attention of a higher official;

(2) An immediate report concerning the adequacy of any investigation of a matter referred under paragraph (d) of this section, if the Counsel believes that a significant question exists as to the adequacy of such investigation; and

(3) An annual report, or a semiannual report if the Counsel determines this to be necessary, reviewing and evaluating the activities of internal inspection units, or where there are no such units, the discharge of comparable duties within the Department.

(j) Submit recommendations to the Attorney General and the Deputy Attoney General on the need for changes in policies or procedures that become evident during the course of the Counsel's inquiries.

(k) Undertake any other responsibilities assigned by the Attorney General including duties relating to the improvement of the performance of the Department.

§ 0.39b Confidentiality of Information.

Whenever any employee of or applicant to the Department provides information pursuant to § 0.39a(a) or (b), the Counsel and the internal inspection unit shall maintain the confidentiality of the employee or applicant unless the employee or applicant consents to the release of his or her identity or the Counsel determines that the disclosure of the identity is necessary to resolve the allegation.

§ 0.39c Stays of Certain Personnel Actions in the Federal Bureau of Investigation.

(a) The Counsel may, with respect to employees of the Federal Bureau of Investigation, request the Attorney General to stay any personnel action for any period which the Attorney General considers appropriate if the Counsel determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a reprisal for a disclosure of information by the employee to the Attorney General (or the Department official designated by the Attorney General for such purpose) which the employee reasonably believes evidences:

(1) A violation of any law, rule or regulation; or

(2) Mismanagement, a gross waste of funds, abuse of authority or a substantial and specific danger to public health or safety.

(b) The Attorney General, when requested to stay a personnel action under paragraph (a) of this section, may stay such action when the Attorney General determines that under the facts and circumstances involved such stay would be appropriate.

§ 0.39d Relationship to other departmental units.

(a) Primary responsibility for assuring the maintenance of the highest standards of professional responsibility by Department employees shall continue to rest with the heads of the offices, divisions, bureaus and boards of the Department.

(b) Primary responsibility for investigating an allegation of unprofessional conduct that is lodged against an employee of the Department normally shall continue to rest with the head of the office, division, bureau, or board to which the employee is assigned, or with the head of its internal inspection unit or, if the conduct appears to constitute a violation of law, with the head of the agency having jurisdiction over the subject matter involved.

(c) The heads of the offices, divisions, bureaus, and boards shall provide information and assistance requested by the Counsel in connection with reviews or investigations conducted by the Counsel or by any other person assigned to conduct reviews or investigations and shall keep the Counsel informed of major investigations that they are conducting.

(d) Employees of the Department may be assigned to the Office of Professional Responsibility on a case-by-case basis to conduct such inquiries as may be warranted. However, no investigative personnel shall be assigned except under the specific direction of the Attorney General or the Deputy Attorney General and, in normal course, with the agreement of the head of the unit to which the investigative personnel are regularly assigned. Personnel assigned to the Office shall work under the direction of the Counsel.

§ 0.39e Committee on Professional Responsibility.

The Committee on Professional Responsibility shall consist of Department officials designated by the Attorney General and shall serve as an advisory body to the counsel.

Subpart H—Antitrust Division

§ 0.40 General functions.

The following functions are assigned to and shall be conducted, handled, or supervised by, the Assistant Attorney General, Antitrust Division:

(a) General enforcement, by criminal and civil proceedings, of the Federal antitrust laws and other laws relating to the protection of competition and the prohibition of restraints of trade and monopolization, including conduct of surveys of possible violations of antitrust laws, conduct of grand jury proceedings, issuance and enforcement of civil investigative demands, civil actions to obtain orders and injunctions, civil actions to recover forfeitures or damages for injuries sustained by the United States as a result of antitrust law violations, proceedings to enforce compliance with final judgments in antitrust suits and negotiation of consent judgments in civil actions, civil actions to recover penalties, criminal actions to impose penalties including actions for the imposition of penalties for conspiring to defraud the Federal Government by violation of the antitrust laws, participation as *amicus curiae* in private antitrust litigation; and prosecution or defense of appeals in antitrust proceedings.

(b) Intervention or participation before administrative agencies functioning wholly or partly under regulatory statutes in administrative proceedings which require consideration of the antitrust laws or competitive policies, including such agencies as the Civil Aeronautics Board, Interstate Commerce Commission, Federal Communications Commission, Federal Maritime Commission, Federal Energy Regulatory Commission, Federal Reserve Board, Federal Trade Commission, Nuclear Regulatory Commission, and Securities and Exchange Commission, except proceedings referred to any agency by a federal court as an incident to litigation being conducted under the supervision of another Division in this Department.

(c) Developing procedures to implement, receiving information, maintaining records, and preparing reports by the Attorney General to the President as required by Executive Order No. 10936 of April 25, 1961 relating to identical bids submitted to Federal and State departments and agencies.

(d) As the delegate of the Attorney General furnishing reports and summaries thereof respecting the competitive factors involved in proposed mergers or consolidations of insured banks required by the Federal Deposit Insurance Act, as amended (12 U.S.C. 1828(c)), furnishing reports respecting the competitive factors involved in proposed acquisitions under the Savings and Loan Holding Company Amendments of 1967 (12 U.S.C. 1730a(e)), furnishing advice regarding the proposed disposition of surplus Government property required by the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 488), furnishing reports regarding deepwater port licenses under the Deepwater Port Act of 1974 (33 U.S.C. 1506), furnishing advice and reports regarding federal coal leases under the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 184(1)), furnishing advice on oil and gas leasing under the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1334(a) 1334(f)(3), 1337), furnishing reports and recommendations regarding the issuance of licenses for exploration or permits for commercial recovery of deep seabed hard minerals pursuant to the Deep Seabed Hard Minerals Resources Act (30 U.S.C. 1413(d)), furnishing advice or reports regarding contracts or operating agreements concerning exploration, development or production of petroleum reserves under the Naval Petroleum Reserves Production Act of 1976 (10 U.S.C. 7430(g)(1)), and furnishing advice regarding nuclear licenses under the Atomic Energy Act of 1954 (42 U.S.C. 2135).

(e) Preparing the approval or disapproval of the Attorney General whenever such action is required by statute from the standpoint of the antitrust laws as a prerequisite to the development of Defense Production Act voluntary programs or agreements and small business production or raw material pools, the national defense program and atomic energy matters.

(f) Assembling information and preparing reports required or requested by the Congress or the Attorney General as to the effect upon the maintenance and preservation of competition under the free enterprise system of various Federal laws or programs, including the Defense Production Act of 1950, the Small Business Act, the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 208-2), the Naval Petroleum Reserves Production Act of 1976 (10 U.S.C. 7431(b)(2)), and the joint resolution of July 28, 1955, giving consent to the Interstate Compact to Conserve Oil and Gas.

(g) Preparing for transmittal to the President, Congress, or other departments or agencies views or advice as to the propriety or effect of any action, program or practice upon the maintenance and preservation or competition under the free enterprise system.

(h) Representing the Attorney General on interdepartmental or interagency committees concerned with the maintenance and preservation of competition generally and in various sections of the economy and the operation of the free enterprise system and when authorized participating in conferences and committees with foreign governments and treaty organizations concerned with competition and restrictive business practices in international trade.

(i) Collecting fines, penalties, judgments, and forfeitures arising in antitrust cases.

(j) Preparing the annual report to the Congress concerning the administration of the Attorney General's functions under the Truth in Lending Act (Title 1 of the Consumer Credit Protection Act) (15 U.S.C. 1613).

[Order No. 617-75, 40 FR 36118, Aug. 19, 1975, as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 960-81, 46 FR 52344, Oct. 27, 1981]

§ 0.41 Special functions.

The following functions are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General, Antitrust Division:

(a) Institution of proceedings to impose penalties for violations of section 202(a) of the Communications Act of 1934 (48 Stat. 1070), as amended (47 U.S.C. 202(a)), which prohibits common carriers by wire or radio from unjustly or unreasonably discriminating among persons, classes of persons, or localities.

(b) Upon appropriate certification by the Federal Trade Commission, the institution of criminal proceedings under the Federal Trade Commission Act (15 U.S.C. 56(b)), the determination whether the Attorney General will commence, defend or intervene in civil proceedings under the Federal Trade Commission Act (15 U.S.C. 56(a)), and the determination under the Consumer Product Safety Act (15 U.S.C. 2076(b)(7)), whether the Attorney General will initiate, prosecute, defend or appeal an action relating to the Consumer Product Safety Commission.

(c) Representing the United States in suits pending as of February 28, 1975, before three-judge district courts under section 2321-2325 of Title 28 of the United States Code, to enforce, suspend, enjoin, annul, or set aside, in whole or in part, any order of the Interstate Commerce Commission. (Pub. L. 93-584, Sec. 10, 88 Stat. 1917)

(d) Representing the United States in proceedings before courts of appeals to review orders of the Interstate Commerce Commission, the Federal Communications Commission, the Federal Maritime Commission and the Nuclear Regulatory Commission (28 U.S.C. 2341-2350).

(e) Representing the Civil Aeronautics Board, and the Secretary of the Treasury or his delegates under the Federal Alcohol Administration Act, in courts of appeals reviewing their respective administrative orders.

(f) Defending the Secretary of the Treasury or his delegates under the Federal Alcohol Administration Act, and the agencies named in paragraphs (c), (d) and (e) of this section or their officers against the injunctive actions brought in Federal courts when the matter which is the subject of the actions will ultimately be the subject of review under paragraph (c), (d), (e) or (g) of this section, or of an enforcement action under paragraph (b) of this section.

(g) Seeking review of or defending judgments rendered in proceedings under paragraphs (a) through (f) of this section and judgments rendered upon review of Federal Trade Commission orders by courts of appeals.

(h) All litigation arising under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*), the Fair Packaging and Labeling Act (15 U.S.C. 1451 *et seq.*), the Automobile Information Disclosure Act (15 U.S.C. 1231 *et seq.*), the odometer requirements section of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1981 *et seq.*), the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1331 *et seq.*), the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 *et seq.*), the Federal Caustic Poison Act (15 U.S.C. 401 note), the Consumer Credit Protection Act (15 U.S.C. 1611, 1681q and 1681r), the Wool Products Labeling Act of 1939 (15 U.S.C. 68 *et seq.*), the Fur Products Labeling Act (15 U.S.C. 69 *et seq.*), the Textile Fiber Products Identification Act (15 U.S.C. 70 *et seq.*), the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*), the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*), the Refrigerator Safety Device Act (15 U.S.C. 1211 *et seq.*), and Title I of the Magnuson-Moss Warranty—Federal Trade Commission Improvements Act (15 U.S.C. 2301 *et seq.*).

(i) Acting on behalf of the Attorney General with respect to sections 252 and 254 of the Energy Policy and Conservation Act, 42 U.S.C. 6272, 6274, including acting on behalf of the Attorney General with respect to voluntary agreements or plans of action established pursuant to section 252 of that Act.

[Order No. 615-75, 40 FR 36118, Aug. 19, 1975, as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 769-78, 43 FR 8256, Mar. 1, 1978; Order No. 960-81, 46 FR 52344, Oct. 27, 1981]

APPENDIX TO SUBPART H

DELEGATION OF AUTHORITY RESPECTING DENIALS OF FREEDOM OF INFORMATION AND PRIVACY ACT REQUESTS

[MEMO No. 79-1]

1. The Deputy Assistant Attorney General for Litigation, Antitrust Division, will assume the duties and responsibilities previously assigned to the Assistant Attorney General by 28 C.F.R. 16.5 (b) and (c) and 16.45(a), as amended July 1, 1977, and defined in those sections, for denying requests and obtaining statutory extensions of time under the Freedom of Information Act, 5 U.S.C. 552, *et seq.*, and the Privacy Act, 5 U.S.C. 552a, *et seq.*

2. The Deputy Assistant Attorney General for Litigation, Antitrust Division, who signs a denial or partial denial of a request for records made under the Freedom of Information Act or the Privacy Act shall be the "person responsible for the denial" within the meaning of 5 U.S.C. 552(a) and 5 U.S.C. 552a (j) and (k).

[44 FR 54045, Sept. 18, 1979]

Subpart I—Civil Division

CROSS REFERENCE: For regulations pertaining to the Civil Division, see Part 15 of this chapter.

§ 0.45 General functions.

The following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General, Civil Division:

(a) Admiralty and Shipping Cases—civil and admiralty litigation in any court by or against the United States, its officers and agents, which involves ships or shipping (except suits to enjoin final orders of the Federal Maritime Commission under the Shipping Act of 1916 and under the Intercoastal Shipping Act assigned to the Antitrust Division by Subpart H of this part), defense of regulatory orders of the Maritime Administration affecting navigable waters or shipping thereon (except as assigned to the Land and Natural Resources Division by § 0.65(a)), workmen's compensation, and litigation and waiver of claims under reciprocal-aid maritime agreements with foreign governments.

(b) Court of Claims Cases—litigation by and against the United States in the Court of Claims, except cases assigned to the Land and Natural Resources Division and the Tax Division by Subparts M and N of this part, respectively.

(c) International Trade—all litigation before the Court of International Trade, including suits instituted pursuant to 28 U.S.C. 1581(i) and suits by the United States to recover customs duties, to recover upon a bond relating to the importation of merchandise required by the laws of the United States or by the Secretary of the Treasury and to recover a civil penalty under sections 592, 704(i)(2), or 734(i)(2) of the Tariff Act of 1930, and the presentation of appeals in the Court of International Trade.

(d) Fraud Cases—civil claims arising from fraud on the Government (other than antitrust, land and tax frauds), including alleged claims under the False Claims Act, the Surplus Property Act of 1944, the Anti-Kickback Act, the Contract Settlement Act of 1944, the Contract Disputes Act of 1978, 19 U.S.C. 1592 and common law fraud.

(e) Gifts and Bequests—handling matters arising out of devises and bequests and inter vivos gifts to the United States, except determinations as to the validity of title to any lands involved and litigation pertaining to such determinations.

(f) Patent and Allied Cases and Other Patent Matters—patent, copyright, and trademark litigation before the U.S. courts and the Patent Office, including patent and copyright infringement suits in the Court of Claims (28 U.S.C. 1498), suits for compensation under the Patent Secrecy Act where the invention was ordered to be kept secret in the interest of national defense (35 U.S.C. 183), suits for compensation for unauthorized practice of a patented invention in the furnishing of assistance under the Foreign Assistance Act (22 U.S.C. 2356), suits for compensation for the unauthorized communication of restricted data by the Atomic Energy Commission to other nations (42 U.S.C. 2223), interference proceedings (35 U.S.C. 135, 141, 142, 146), defense of the Register of Copyrights in his administrative acts, suits for specific performance to acquire title to patents, and civil patent-fraud cases.

(g) Tort Cases—defense of tort suits against the United States arising under the Federal Tort Claims Act and special acts of Congress; similar litigation against cost-plus Government contractors and Federal employees whose official conduct is involved (except actions against Government contractors and Federal employees which are assigned to the Land and Natural Resources Division by § 0.65(a); prosecution of tort claims for damage to Government property, and actions for the recovery of medical expenses under Pub. L. 87-693 and Part 43 of this title.

(h) General Civil Matters—litigation by and against the United States, its agencies, and officers in all courts and administrative tribunals to enforce Government rights, functions, and monetary claims (except defense of injunctive proceedings assigned to the Antitrust Division by Subpart H of this part, civil proceedings seeking exclusively equitable relief assigned to the Criminal Division by §§ 0.55(i) and 0.61(d), and proceedings involving judgments, fines, penalties, and forfeitures assigned to other divisions by § 0.171), and to defend challenged actions of Government agencies and officers, not otherwise assigned, including, but not limited to, civil penalties and forfeitures, actions in the Court of Claims under the Renegotiation Act, claims against private persons or organizations for which the Government is, or may ultimately be, liable, except as provided in § 0.70(c)(2), defense of actions arising under section 2410 of Title 28 of the United States Code whenever the United States is named as a party as the result of the existence of a Federal lien against property, defense of actions for the recovery of U.S. Government Life Insurance and National Service Life Insurance (38 U.S.C. 784), enforcement of reemployment rights in private industry pursuant to the Military Selective Service Act of 1967 (50 U.S.C., App. 459); reparations suits brought by the United States as a shipper under the Interstate Commerce Act; civil actions by the United States for penalties for violations of car service orders (49 U.S.C. 1(17a)); actions restraining violations of Part II of the Interstate Commerce Act (49 U.S.C. 322(b) and 322(h); civil actions under Part I of the Interstate Commerce Act (49 U.S.C. 6(10) and 16(9)); injunctions against violations of Interstate Commerce Commission orders (49 U.S.C. 16(12)); mandamus to compel the furnishing of information to the Interstate Commerce Commission (49 U.S.C. 19a(1) and 20(9)); recovery of rebates under the Elkins Act (49 U.S.C. 41(3)); compelling the appearance of witnesses before the Interstate Commerce Commission and enforcement of subpenas and punishment for contempt (49 U.S.C. 12(3)); suits to enforce final orders of the Secretary of Agriculture under the Perishable Agricultural Commodities Act (7 U.S.C. 499g), and the Packers and Stockyards Act (7 U.S.C. 216); suits to set aside orders of State regulatory agencies (49 U.S.C. 13(4)); and civil matters, except those required to be handled by the Board of Parole, under section 504(a) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 504(a)).

(i) Appeals under section 8(b)(1)(B) of the Contract Disputes Act of 1978—the grant and/or legal denial of prior approval of the Attorney General as described in section 8(g)(1)(B) of the Contract Disputes Act of 1978. The Assistant Attorney General is authorized to redelegate, to the extent and subject to such limitations as may be deemed advisable, to subordinate division officials the responsibilities covered by this subsection and delineated in section 8(g)(1)(B) of the Contract Disputes Act of 1978.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 673-76, 41 FR 54176, Dec. 13, 1976; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 838-79, 44 FR 40498, July 11, 1979; Order No. 960-81, 46 FR 52345, Oct. 27, 1981]

§ 0.46 Certain civil litigation and foreign criminal proceedings.

The Assistant Attorney General in charge of the Civil Division shall, in addition to litigation coming within the scope of § 0.45, direct all other civil litigation including claims by or against the United States, its agencies or officers, in domestic or foreign courts, special proceedings, and similar civil matters not otherwise assigned, and shall employ foreign counsel to represent before foreign criminal courts, commissions or administrative agencies officials of the Department of Justice and all other law enforcement officers of the United States who are charged with violations of foreign law as a result of acts which they performed in the course and scope of their Government service.

[Order No. 441-70, 35 FR 16318, Oct. 17, 1970]

§ 0.47 Alien Property matters.

The Office of Alien Property shall be a part of the Civil Division:

(a) The following described matters are assigned to, and shall be conducted, handled, or supervised by the Assistant Attorney General in charge of the Civil Division, who shall also be the Director of the Office of Alien Property:

(1) Exercising or performing all the authority, rights, privileges, powers, duties, and functions delegated to or vested in the Attorney General under the Trading with the Enemy Act, as amended, Title II of the International Claims Settlement Act of 1949, as amended, the act of September 28, 1950, 64 Stat. 1079 (50 U.S.C. App. 40), the Philippine Property Act of 1946, as amended, and the Executive orders relating to such acts, including, but not limited to, vesting, supervising, controlling, administering, liquidating, selling, paying debt claims out of, returning, and settling of intercustodial disputes relating to, property subject to one or more of such acts.

(2) Conducting and directing all civil litigation with respect to the Trading with the Enemy Act, Title II of the International Claims Settlement Act, the Foreign Funds Control Program and the Foreign Assets Control Program.

(3) Designating within the Office of Alien Property a certifying officer, and an alternate, to certify copies of documents issued by the Director, or his designee, which are required to be filed with the Office of the Federal Register.

(b) The Director of the Office of Alien Property shall act for and on behalf of the Attorney General.

(c) All the authority, rights, privileges, powers, duties, and functions of the Director of the Office of Alien Property may be exercised or performed by any agencies, instrumentalities, agents, delegates, or other personnel designated by him.

(d) Existing delegations by the Assistant Attorney General, Director, Office of Alien Property, or the Director, Office of Alien Property, shall continue in force and effect until modified or revoked.

(e) The Assistant Attorney General in charge of the Civil Division is authorized to administer and give effect to the provisions of the agreement entitled "Agreement Between the United States of American and the Republic of Austria Regarding the Return of Austrian Property, Rights and Interests," which was concluded on January 30, 1959, and was ratified by the Senate of the United States on February 25, 1964.

§ 0.48 International trade litigation.

The Attorney-in-Charge, International Trade Field Office, at 26 Federal Plaza, New York, New York 10007, in the Office of the Assistant Attorney General, Civil Division, is designated to accept service of notices of appeals to the Court of Customs and Patent Appeals and all other papers filed in the Court of International Trade, when the United States is an adverse party. (28 U.S.C. 2633(c); 28 U.S.C. 2601(b)).

[Order No. 960-81, 46 FR 52345, Oct. 27, 1981]

§ 0.49 International Judicial Assistance.

The Assistant Attorney General in charge of the Civil Division shall direct and supervise the following functions:

(a) The functions of the "Central Authority" under the Convention between the United States and other Governments on the Taking of Evidence Abroad in Civil and Commercial Matters, TIAS 7444, which entered into force on October 7, 1972.

(b) The functions of the "Central Authority" under the Convention between the United States and other Governments on the Service Abroad of

Judicial and Extrajudicial Documents, TIAS 6638, which entered into force on February 10, 1969.

(c) To receive letters of requests issued by foreign and international judicial authorities which are referred to the Department of Justice through diplomatic or other governmental channels, and to transmit them to the appropriate courts or officers in the United States for execution.

(d) To receive and transmit through proper channels letters of request addressed by courts in the United States to foreign tribunals in connection with litigation to which the United States is a party.

[Order No. 555-73, 38 FR 32805, Nov. 28, 1973]

Subpart J—Civil Rights Division

§ 0.50 General functions.

The following functions are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General, Civil Rights Division:

(a) Enforcement of all Federal statutes affecting civil rights, including those pertaining to elections and voting, public accommodations, public facilities, school desegregation, employment (including 42 U.S.C. 2000e-(6)), housing, abortion, sterilization, credit, and constitutional and civil rights of Indians arising under 25 U.S.C. 1301 *et seq.*, and of institutionalized persons, and authorization of litigation in such enforcement, including criminal prosecutions and civil actions and proceedings on behalf of the Government and appellate proceedings in all such cases. Notwithstanding the provisions of the foregoing sentence, the responsibility for the enforcement of the following described provisions of the United States Code is assigned to the Assistant Attorney General, Criminal Division:

(1) Sections 591 through 593 and sections 595 through 612 of title 18, United States Code, relating to elections and political activities;

(2) Sections 241, 242, and 594 of title 18, and sections 1973i and 1973j of title 42, United States Code, insofar as they relate to voting and election matters not involving discrimination or intimidation on grounds of race or color, and section 245(b)(1) of title 18, United States Code, insofar as it relates to matters not involving discrimination or intimidation on grounds of race, color, religion, or national origin;

(3) Section 245(b)(3) of title 18, United States Code, pertaining to forcible interference with persons engaged in business during a riot or civil disorder; and

(4) Sections 241 through 256 of title 2, United States Code (Federal Corrupt Practices Act).

(b) Requesting and reviewing investigations arising from reports or complaints of public officials or private citizens with respect to matters affecting civil rights.

(c) Conferring with individuals and groups who call upon the Department in connection with civil rights matters, advising such individuals and groups thereon, and initiating action appropriate thereto.

(d) Coordination within the Department of Justice of all matters affecting civil rights.

(e) Consultation with and assistance to other Federal departments and agencies and State and local agencies on matters affecting civil rights.

(f) Research on civil rights matters, and the making of recommendations to the Attorney General as to proposed policies and legislation relating thereto.

(g) Representation of Federal officials in private litigation arising under 42 U.S.C. 2000d or under other statutes pertaining to civil rights.

(h) Administration of section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c).

(i) Upon request, assisting, as appropriate, the Commission on Civil Rights or other similar Federal bodies in carrying out research and formulating recommendations.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 484-72, 37 FR 11317, June 7, 1972; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 725-77, 42 FR 26205, May 23, 1977; Order No. 839-79, 44 FR 43468, July 25, 1979; Order No. 843-79, 44 FR 46272, Aug. 7, 1979; Order No. 944-81, 46 FR 29704, June 3, 1981; Order No. 960-81, 46 FR 52345, Oct. 27, 1981]

§ 0.51 Leadership and coordination of nondiscrimination laws.

(a) The Assistant Attorney General in charge of the Civil Rights Division shall, except as reserved herein, exercise the authority vested in and perform the functions assigned to the Attorney General by Executive Order No. 12250 ("Leadership and Coordination of Nondiscrimination Laws"). This delegation does not include the function, vested in the Attorney General by §§ 1-101 and 1-102 of the Executive order, of approving agency rules, regulations, and orders of general applicability issued under the Civil Rights Act of 1964 and § 902 of the Education Amendments of 1972. Likewise, this delegation does not include the authority to issue those regulations under § 1-303 of the Executive Order which are required, by § 0.180 of this Part, to be issued by the Attorney General.

(b) Under paragraph (a) of this section, the Assistant Attorney General in charge of the Civil Rights Division shall be responsible for coordinating the implementation and enforcement by Executive agencies of the nondiscrimination provisions of the following laws:

(1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(2) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*).

(3) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

(4) Any other provision of Federal Statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

[Order No. 944-81, 46 FR 29704, June 3, 1981]

§ 0.52 Certifications under 18 U.S.C. 3503.

The Assistant Attorney General in charge of the Civil Rights Division and his Deputy Assistant Attorney Generals are each authorized to exercise or perform the functions or duties conferred upon the Attorney General by section 3503 of title 18, United States Code, to certify that the legal proceeding, in which a motion to take testimony by deposition is made, is against a person who is believed to have participated in an organized criminal activity, where the subject matter of the case or proceeding in which the motion is sought is within the cognizance of the Civil Rights Division pursuant to § 0.50.

[Order No. 452-71, 36 FR 2601, Feb. 9, 1971]

APPENDIX TO SUBPART J

CIVIL RIGHTS DIVISION

[MEMO 75-2]

NOTE: Civil Rights Division Memo 75-2, was superseded by Civil Right Division, Memo 78-1 appearing at 43 FR 37686, Aug. 24, 1978.

[MEMO 78-1]

DELEGATION OF AUTHORITY RESPECTING DENIALS OF FREEDOM OF INFORMATION AND PRIVACY ACT REQUESTS

1. The Deputy Assistant Attorney General, Civil Rights Division, who is authorized to assume the responsibilities of the Assistant Attorney General in his absence (the Principal Deputy Assistant Attorney General) will assume the duties and responsibilities previously assigned to the Assistant Attorney General by 28 CFR 16.5 (b) and (c) and 16.45(a), as amended July 1, 1977, and defined in those sections, for denying requests and obtaining extensions of time under the Freedom of Information Act, 5 U.S.C. 552, et seq., and the Privacy Act, 5 U.S.C. 552a, et seq.

2. In the absence or unavailability of the Principal Deputy Assistant Attorney General, the Deputy Assistant Attorney General for Policy and Planning or, in his absence or unavailability, the Chief of the Appellate Section, is authorized to assume the duties and responsibilities described in paragraph 1.

3. The Principal Deputy Assistant Attorney General, Deputy Assistant Attorney General for Policy and Planning or Chief of the Appellate Section, who signs a denial or partial denial of a request for records made under the Freedom of Information Act or the Privacy Act shall be the "person responsible for the denial" within the meaning of 5 U.S.C. 552(a) and 5 U.S.C. 552a (j) and (k).

[43 FR 37686, Aug. 24, 1978]

[MEMO 79-1]

DELEGATION OF AUTHORITY FOR ADMINISTRATION OF SECTION 5 OF THE VOTING RIGHTS ACT

1. The authority of the Attorney General regarding administration of section 5 of the Voting Rights Act of 1965, as amended, (42 U.S.C. 1973c) has been delegated to the Assistant Attorney General in charge of the Civil Rights Division.

2. That authority is delegated to the Chief of the Voting Section, provided that any determination to object to a change affecting voting (see 28 CFR Part 51) or to withdraw such an objection shall be made by the Assistant Attorney General.

3. The Chief of the Voting Section may authorize the Deputy Chief or the Director of the section 5 unit to act on his or her behalf.

[44 FR 53080, Sept. 12, 1979]

Subpart K—Criminal Division

§ 0.55 General functions.

The following functions are assigned to and shall be conducted, handled, or supervised by, the Assistant Attorney General, Criminal Division:

(a) Prosecutions for Federal crimes not otherwise specifically assigned.

(b) Cases involving criminal frauds against the United States except cases assigned to the Antitrust Division by § 0.40(a) involving conspiracy to defraud the Federal Government by violation of the antitrust laws, and tax fraud cases assigned to the Tax Division by Subpart N of this part.

(c) All criminal and civil litigation under the Controlled Substances Act, 84 Stat. 1242, and the Controlled Substances Import and Export Act, 84 Stat. 1285 (titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970).

(d) Libels or civil penalty actions (including petitions for remission or mitigation of civil penalties and forfeitures, offers in compromise, and related proceedings) under the Federal Aviation Act of 1958, the Contraband Transportation Act, the Copyrights Act, the customs laws (except those assigned to the Civil Division which involve sections 592, 704(i)(2) or 734(i)(2) of the Tariff Act of 1930), the Export Control Act of 1949, the Federal Alcohol Administration Act, the Federal Seed Act, the Gold Reserve Act of 1934, the Hours of Service Act, the Animal Welfare Act, the Immigration and Nationality Act, the neutrality laws, laws relating to cigarettes, liquor, narcotics and dangerous drugs, other controlled substances, gambling, war materials, pre-Columbian artifacts, coinage, and firearms, locomotive inspection (45 U.S.C. 22, 23, 28-34), the Organized Crime Control Act of 1970, prison-made goods (18 U.S.C. 1761-1762), the Safety Appliance Act, standard barrels (15 U.S.C. 231-242), the Sugar Act of 1948, and the Twenty-Eight Hour Law.

(e) Subject to the provisions of Subpart Y of this part, consideration, acceptance, or rejection of offers in compromise of criminal and tax liability under the laws relating to liquor, narcotics and dangerous drugs, gambling, and firearms, in cases in which the criminal liability remains unresolved.

(f) All litigation arising under the immigration and nationality laws (except Japanese renunciation proceedings, which are assigned to the Civil Division, and suits under the Tucker Act for the recovery of money covered into the Treasury on forfeited immigration bonds), and the passport and visa laws (except injunction actions against the Secretary of State to require the issuance of passports, which are within the jurisdiction of the Civil Division under § 0.45(h)), and investigations and other appropriate inquiries pursuant to all the power and authority of the Attorney General to enforce the Immigration and Nationality Act and all other laws relating to the immigration and naturalization of aliens as they relate to the individuals identified in 8 U.S.C. 1182(a)(33) and 1251(a)(19).

(g) Coordination of enforcement activities directed against organized crime and racketeering.

(h) Enforcement of the Act of January 2, 1951, 64 Stat. 1134, as amended by the Gambling Devices Act of 1962, 76 Stat. 1075, 15 U.S.C. 1171 et seq., including registration thereunder. (See also 28 CFR 3.2)

(i) Civil proceedings seeking exclusively equitable relief against investigations, prosecutions, convictions or other criminal justice activities (including without limitation applications for writs of habeas corpus and coram nobis) except that any such proceeding may be conducted, handled, or supervised by another division by agreement between the head of such division and the Assistant Attorney General in charge of the Criminal Division.

(j) International extradition proceedings.

(k) Relation of military to civil authority with respect to criminal matters affecting both.

(l) All criminal matters arising under the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519).

(m) Enforcement of the following-described provisions of the United States Code—

(1) Sections 591 through 593 and sections 595 through 612 of Title 18, United States Code, relating to elections and political activities;

(2) Sections 241, 242, and 594 of Title 18, and sections 1973i and 1973j of Title 42, United States Code, insofar as they relate to voting and election matters not involving discrimination or intimidation on grounds of race or color, and section 245(b)(1) of Title 18, United States Code, insofar as it relates to matters not involving discrimination or intimidation on grounds of race, color, religion, or national origin;

(3) Section 245(b)(3) of Title 18, United States Code, pertaining to forcible interference with persons engaged in business during a riot or civil disorder; and

(4) Sections 241 through 256 of Title 2, United States Code (Federal Corrupt Practices Act). (See § 0.50(a).)

(n) Civil actions arising under 39 U.S.C. 3010, 3011 (Postal Reorganization Act).

(o) Resolving questions that arise as to Federal prisoners held in custody by Federal officers or in Federal prisons, commitments of mentally defective defendants and juvenile delinquents, validity and construction of sentences, probation, and parole.

(p) Supervision of matters arising under the Escape and Rescue Act (18 U.S.C. 751, 752), the Fugitive Felon Act (18 U.S.C. 1072, 1073), and the Obstruction of Justice Statute (18 U.S.C. 1503).

(q) Supervision of matters arising under the Bail Reform Act of 1966 (28 U.S.C. 3041-3143, 3146-3152, 3568).

(r) Supervision of matters arising under the Narcotic Addict Rehabilitation Act of 1966 (18 U.S.C. 4251-4255; 28 U.S.C. 2901-2906; 42 U.S.C. 3411-3426, 3441, 3442).

(s) Civil proceedings in which the United States is the plaintiff filed under the Organized Crime Control Act of 1970, 18 U.S.C. 1963-1968.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 446-70, 35 FR 19666, Dec. 29, 1970; Order No. 458-71, 36 FR 10862, June 4, 1971; Order No. 481-72, 37 FR 9214, May 6, 1972; Order No. 511-73, 38 FR 8152, March 29, 1973; Order No. 673-76, 41 FR 54176, Dec. 13, 1976; Order No. 852-79, 44 FR 54045, Sept. 18, 1979; Order No. 960-81, 46 FR 52345, Oct. 27, 1981]

§ 0.56 Exclusive or concurrent jurisdiction.

The Assistant Attorney General in charge of the Criminal Division is authorized to determine administratively whether the Federal Government has exclusive or concurrent jurisdiction over offenses committed upon lands acquired by the United States, and to consider problems arising therefrom.

§ 0.57 Criminal prosecutions against juveniles.

The Assistant Attorney General in charge of the Criminal Division and his Deputy Assistant Attorneys General are each authorized to exercise the power and authority vested in the Attorney General by sections 5032 and 5036 of Title 18, United States Code, relating to criminal proceedings against juveniles. The Assistant Attorney General in charge of the Criminal Division is authorized to redelegate any function delegated to him under this section to United States Attorneys and to the Chief of the Section within the Criminal Division which supervises the implementation of the Juvenile Justice and Delinquency Prevention Act (18 U.S.C. 5031 *et seq.*).

[Order No. 579-74, 39 FR 37771, Oct. 24, 1974, as amended by Order No. 894-80, 45 FR 34269, May 22, 1980]

§ 0.58 Delegation respecting payment of benefits for disability or death of law enforcement officers not employed by the United States.

The Assistant Attorney General in charge of the Criminal Division is authorized to exercise or perform any of the functions or duties conferred upon the Attorney General by the Act to Compensate Law Enforcement Officers not Employed by the United States Killed or Injured While Apprehending Persons Suspected of Committing Federal Crimes (5 U.S.C. 8191, 8192, 8193).

§ 0.59 Certain certifications under 18 U.S.C. 3331 and 3503.

(a) The Assistant Attorney General in charge of the Criminal Division is authorized to exercise or perform the functions or duties conferred upon the Attorney General by section 3331 of Title 18, United States Code, to certify that in his judgment a special grand jury is necessary in any judicial district of the United States because of criminal activity within such district.

(b) The Assistant Attorney General in charge of the Criminal Division and his Deputy Assistant Attorney Generals are each authorized to exercise or perform the functions or duties conferred upon the Attorney General by section 3503 of Title 18, United States Code, to certify that the legal proceeding, in which a motion to take testimony by deposition is made, is against a person who is believed to have participated in an organized criminal activity, where the subject matter of the case or proceeding in which the motion is sought is within the cognizance of the Criminal Division pursuant to § 0.55, or is not within the cognizance of the Civil Rights Division.

[Order No. 452-71, 36 FR 2601, Feb. 9, 1971, as amended by Order No. 511-73, 38 FR 8152, March 29, 1973]

§ 0.61 Functions relating to internal security.

The following functions are assigned to and shall be conducted, handled, or supervised by, the Assistant Attorney General, Criminal Division:

(a) Enforcement of all criminal laws relating to subversive activities and kindred offenses directed against the internal security of the United States, including the laws relating to treason, sabotage, espionage, and sedition; enforcement of the Foreign Assets Control Regulations issued under the Trading With the Enemy Act (31 CFR 500.101 *et seq.*); criminal prosecutions under the Atomic Energy Act of 1954, the Smith Act, the neutrality laws, the Arms Export Control Act, the Federal Aviation Act of 1958 (49 U.S.C. 1523) relating to offenses involving the security control of air traffic, and 18 U.S.C. 799; and criminal prosecutions for offenses, such as perjury and false statements, arising out of offenses relating to national security.

(b) Administration and enforcement of the Foreign Agents Registration Act of 1938, as amended; the act of August 1, 1956, 70 Stat. 899 (50 U.S.C. 851-857), including the determination in writing that the registration of any person coming within the purview of the act would not be in the interest of national security; and the Voorhis Act.

(c) Administration and enforcement of the Internal Security Act of 1950, as amended.

(d) Civil proceedings seeking exclusively equitable relief against laws, investigations or administrative actions designed to protect the national security (including without limitation personnel security programs and the foreign assets control program).

(e) Interpretation of Executive Order No. 10450 of April 27, 1953, as amended, and advising other departments and agencies in connection with the administration of the Federal employees security program, including the designation of organizations as required by the order; the interpretation of Executive Order No. 10501 of November 5, 1953, as amended, and of regulations issued thereunder in accordance with section 11 of that order; and the interpretation of Executive Order No. 10865 of February 20, 1960.

(f) Libels and civil penalty actions (including petitions for remission or mitigation of civil penalties and forfeitures, offers in compromise and related proceedings) arising out of violations of the Trading with the Enemy Act, the neutrality statutes and the Arms Export Control Act.

(g) Enforcement and administration of the provisions of 2 U.S.C. 441e relating to contributions by foreign nationals.

(h) Enforcement and administration of the provisions of 18 U.S.C. 219, relating to officers and employees of the United States acting as agents of foreign principals.

(i) Criminal matters arising under the Military Selective Service Act of 1967.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 451-71, 36 FR 1251, Jan. 27, 1971; Order No. 511-73, 38 FR 8152, Mar. 29, 1973; Order No. 673-76, 41 FR 54176, Dec. 13, 1976; Order No. 960-81, 46 FR 52345, Oct. 27, 1981]

§ 0.62 Representative capacities.

The Assistant Attorney General in charge of the Criminal Division shall:

(a) Be a member and serve as Chairman of the committee which represents the Department of Justice in the development and implementation of plans for exchanging visits between the Iron Curtain countries and the United States and have authority to designate an alternate to serve on such committee.

(b) Provide Department of Justice representation on the Interdepartmental Committee on Internal Security.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 511-73, 38 FR 8152, Mar. 29, 1973]

§ 0.63 Delegation respecting admission of certain aliens.

The Assistant Attorney General in charge of the Criminal Division is authorized to exercise the power and authority vested in the Attorney General by section 7 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403h), with respect to entry of certain aliens into the United States for permanent residence.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 511-73, 38 FR 8152, Mar. 29, 1973]

§ 0.64 Certifications under 18 U.S.C. 3503.

The Assistant Attorney General in charge of the Criminal Division and his Deputy Assistant Attorney Generals are each authorized to exercise or perform the functions or duties conferred upon the Attorney General by section 3503 of Title 18, United States Code, to certify that the legal proceeding, in which a motion to take testimony by deposition is made, is against a person who is believed to have participated in an organized criminal activity, where the subject matter of the case or proceeding in which the motion is sought is within the cognizance of the Criminal Division pursuant to § 0.61.

[Order No. 452-71, 36 FR 2601, Feb. 9, 1971, as amended by Order No. 511-73, 38 FR 8152, Mar. 29, 1973]

§ 0.64-1 Central or Competent Authority under treaties on mutual assistance in criminal matters.

The Assistant Attorney General in charge of the Criminal Division shall have the authority and perform the functions of the "Central Authority" or "Competent Authority" (or like designation) under treaties between the United States of America and other countries on mutual assistance in criminal matters which designate the Attorney General or the Department of Justice as such authority. The Assistant Attorney General, Criminal Division, is authorized to redelegate this authority to his Deputy Assistant Attorneys General and to the Director, Office of International Affairs, Criminal Division.

[Order No. 918-80, 45 FR 79758, Dec. 2, 1980]

§ 0.64-2 Delegation respecting transfer of offenders to or from foreign countries.

The Assistant Attorney General in charge of the Criminal Division is authorized to exercise all of the power and authority vested in the Attorney General under Section 4102 of Title 18, U.S. Code, which has not been delegated to the Director of the Bureau of Prisons under 28 CFR 0.96b, including specifically the authority to find the transfer of offenders to or from a foreign country under a treaty as referred to in Pub. L. 95-44 appropriate or inappropriate. The Assistant Attorney General in charge of the Criminal Division is authorized to redelegate this authority to his Deputy Assistant

Attorneys General and appropriate Office Directors and Section Chiefs.

[Order No. 872-80, 45 FR 6541, Jan. 29, 1980]

APPENDIX TO SUBPART K

CRIMINAL DIVISION

[Directive 8-75]

NOTE: Criminal Division Directive 8-75, was superseded by Criminal Division Directive 58, appearing at 44 FR 18661, Mar. 29, 1979.

[Directive 58]

DELEGATION RESPECTING DENIAL OF INFORMATION REQUESTS

The Assistant Attorney General in charge of the Criminal Division, hereby, delegates pursuant to 28 CFR 16.5(b) (as amended March 1, 1975) and 28 CFR 16.45(a), his authority under those sections to deny a request for information under 5 U.S.C. 552(a) or 5 U.S.C. 552a to the Director and Associate Director of the Office of Legal Support Services of the Criminal Division and to the Deputy Assistant Attorney General of the Criminal Division who supervises that Office. The Director, Associate Director, or Deputy Assistant Attorney General making the denial shall be the "person responsible for the denial," within the meaning of 5 U.S.C. 552(a).

[Directive No. 73]

REDELEGATION OF AUTHORITY TO DEPUTY ASSISTANT ATTORNEYS GENERAL AND DIRECTOR OF THE OFFICE OF INTERNATIONAL AFFAIRS RESPECTING TRANSFER OF OFFENDERS TO AND FROM FOREIGN COUNTRIES

By virtue of the authority vested in me by § 0.64-2 of Title 28 of the Code of Federal Regulations, the authority delegated to me by that section to exercise all of the power and authority vested in the Attorney General under Section 4102 of Title 18, U.S. Code, which has not been delegated to the Director of the Bureau of Prisons, including specifically the authority to find the transfer of offenders to or from a foreign country under a treaty as referred to in Pub. L. 95-44 appropriate or inappropriate, is hereby redelegated to each of the Deputy Assistant Attorneys General and the Director of the Office of International Affairs of the Criminal Division.

[44 FR 18661, Mar. 29, 1979, as amended at 45 FR 6541, Jan. 29, 1980]

Subpart M—Land and Natural Resources Division

§ 0.65 General functions.

The following functions are assigned to and shall be conducted, handled, or supervised by the Assistant Attorney General in charge of the Land and Natural Resources Division:

(a) Civil suits and matters in Federal and State courts (and administrative tribunals), by or against the United States, its agencies, officers, or contractors, or in which the United States has an interest, whether for specific or monetary relief, and also nonlitigation matters, relating to:

(1) The public domain lands and the outer continental shelf of the United States.

(2) Other lands and interests in real property owned, leased, or otherwise claimed or controlled, or allegedly impaired or taken, by the United States, its agencies, officers, or contractors, including the acquisition of such lands by condemnation proceedings or otherwise,

(3) The water and air resources controlled or used by the United States, its agencies, officers, or contractors, without regard to whether the same are in or related to the lands enumerated in paragraphs (a) (1) and (2) of this section, and

(4) The other natural resources in or related to such lands, water, and air,

except that the following matters which would otherwise be included in such assignment are excluded therefrom:

(i) Suits and matters relating to the use or obstruction of navigable waters or the navigable capacity of such waters by ships or shipping thereon, the same being specifically assigned to the Civil Division;

(ii) Suits and matters involving tort claims against the United States under the Federal Tort Claims Act and special acts of Congress, the same being specifically assigned to the Civil Division;

(iii) Suits and matters involving the foreclosure of mortgages and other liens held by the United States, the same being specifically assigned to the

Civil and Tax Divisions according to the nature of the lien involved;

(iv) Suits arising under 28 U.S.C. 2410 to quiet title or to foreclose a mortgage or other lien, the same being specifically assigned to the Civil and Tax Divisions according to the nature of the lien held by the United States, and all other actions arising under 28 U.S.C. 2410 involving federal tax liens held by the United States, which are specifically assigned to the Tax Division;

(v) Matters involving the immunity of the Federal Government from State and local taxation specifically delegated to the Tax Division by § 0.71.

(b) Representation of the interests of the United States in all civil litigation in Federal and State courts, and before the Indian Claims Commission, pertaining to Indians, Indian tribes, and Indian affairs, and matters relating to restricted Indian property, real or personal, and the treaty rights of restricted Indians (except matters involving the constitutional and civil rights of Indians assigned to the Civil Rights Division by Subpart J of this part).

(c) Rendering opinions as to the validity of title to all lands acquired by the United States, except as otherwise specified by statute.

(d) Civil and criminal suits and matters involving air, water, noise, and other types of pollution, the regulation of solid wastes, toxic substances, pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act, and the control of the environmental impacts of surface coal mining.

(e) Civil and criminal suits and matters involving obstructions to navigation, and dredging or filling (33 U.S.C. 403).

(f) Civil and criminal suits and matters arising under the Atomic Energy Act of 1954 (42 U.S.C. 2011, et seq.) insofar as it relates to the prosecution of violations committed by a company in matters involving the licensing and operations of nuclear power plants.

(g) Civil and criminal suits and matters relating to the natural and biological resources of the coastal and marine environments, the outer continental shelf, the fishery conservation zone and, where permitted by law, the high seas.

(h) Performance of the Department's functions under § 706.5 of the regulations for the prevention of conflict of interests promulgated by the Secretary of the Interior under the authority of the Surface Mining Control and Reclamation Act of 1977, section 201(f), 91 Stat. 450, and contained in 30 CFR Part 706.

(i) Criminal suits and civil penalty and forfeiture actions relating to wildlife law enforcement under the Endangered Species Act of 1973 (16 U.S.C. 1531-1543); the Lacey Act and related provisions (18 U.S.C. 41-44, 47); the Black Bass Act (16 U.S.C. 851-856); the Airborne Hunting Act (16 U.S.C. 742j-1); the Migratory Bird Act (16 U.S.C. 701, *et seq.*); the Wild Horses and Wild Burros Act (16 U.S.C. 1331-1340); the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d); and the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*).

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 540-73, 38 FR 26910, Sept. 27, 1973; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 764-78, 43 FR 3115, Jan. 23, 1978; Order No. 809-78, 43 FR 55394, Nov. 28, 1978; Order No. 816-79, 44 FR 8868, Feb. 12, 1979; Order No. 960-81, 46 FR 52346, Oct. 27, 1981]

§ 0.65a Litigation involving Environmental Protection Agency.

With respect to any matter assigned to the Land and natural Resources Division in which the Environmental Protection Agency is a party, the Assistant Attorney General in charge of the Land and Natural Resources Division, and such members of his staff as he may specifically designate in writing, are authorized to exercise the functions and responsibilities undertaken by the Attorney General in the Memorandum of Understanding between the Department of Justice and the Environmental Protection Agency (42 FR 48942), except that Subpart Y of this part shall continue to govern as authority to compromise and close civil claims in such matters.

[Order No. 764-78, 43 FR 3115, Jan. 23, 1978]

§ 0.66 Delegation respecting title opinions.

(a) The Assistant Attorney General in charge of the Land and Natural Resources Division or such members of his staff as he may specifically designate in writing, are authorized to sign the name of the Attorney General to opinions on the validity of titles to property acquired by or on behalf of the United States, except those which, in the opinion of the Assistant Attorney General involve questions of policy or for any other reason require the personal attention of the Attorney General.

(b) Pursuant to the provisions of section 1 of Pub. L. 91-393, approved September 1, 1970, 84 Stat. 835, the Assistant Attorney General in charge of the Land and Natural Resources Division is authorized: (1) To exercise the Attorney General's power of delegating to other departments and agencies his (the Attorney General's) responsibility for approving the title to lands acquired by them, (2) with respect to delegations so made to other departments and agencies, to exercise the Attorney General's function of general supervision regarding the carrying out by such departments and agencies of the responsibility so entrusted to them, and (3) to promulgate regulations and any appropriate amendments thereto governing the approval of land titles by such departments and agencies.

[Order No. 440-70, 35 FR 16084, Oct. 14, 1970]

§ 0.67 Delegation respecting conveyances for public-airport purposes.

The Assistant Attorney General in charge of the Land and Natural Resources Division, and such members of his staff as he may specifically designate in writing, are authorized to exercise the power and authority vested in the Attorney General by section 23(b) of the Airport and Airway Development Act of 1970 (84 Stat. 219; 49 U.S.C. 1723) with respect to approving the performance of acts and execution of instruments necessary to make the conveyances requested in carrying out the purposes of that section, except those acts and instruments which, in the opinion of the Assistant Attorney General, involve questions of policy or for any other reason require the personal attention of the Attorney General.

[Order No. 468-71, 36 FR 20428, Oct. 22, 1971]

§ 0.68 Delegation respecting mineral leasing.

The Assistant Attorney General in charge of the Land and Natural Resources Division, and such members of his staff as he may specifically designate in writing, are authorized to execute the power and authority of the Attorney General under the provisions of section 3 of the act of August 7, 1947, 61 Stat. 914, 30 U.S.C. 352, respecting the leasing of minerals on lands under the jurisdiction of the Department of Justice.

[Order No. 542-73, 38 FR 28289, Oct. 12, 1973]

§ 0.69 Delegation of Authority to make determinations and grants.

The Assistant Attorney General in charge of the Land and Natural Resources Division, or such members of his staff as he may specifically designate in writing, are authorized to exercise the power and authority vested in the Attorney General by Pub. L. 87-852, approved October 23, 1962 (40 U.S.C. 319), with respect to making the determinations and grants necessary in carrying out the purposes of that Act, except those acts and instruments which in the opinion of the Assistant Attorney General involve questions of policy or for any other reason require the personal attention of the Attorney General.

[Order No. 736-77, 42 FR 38177, July 27, 1977]

§ 0.69a Delegation respecting approval of conveyances.

The Assistant Attorney General in charge of the Land and Natural Resources Division, and such members of his staff as he may specifically designate in writing, are authorized to exercise the power and authority vested in the Attorney General by the Act of June 4, 1934, 48 Stat. 836, with respect to approving the making or acceptance of conveyances by the Secretary of the Interior on behalf of the United States.

[Order No. 947-81, 46 FR 29931, June 4 1981]

Subpart N—Tax Division

§ 0.70 General functions.

The following functions are assigned to and shall be conducted, handled, or supervised by, the Assistant Attorney General, Tax Division:

(a) Prosecution and defense in all courts, other than the Tax Court, of civil suits, and the handling of other matters, arising under the internal revenue laws, and litigation resulting from the taxing provisions of other Federal statutes (except civil forfeiture and civil penalty matters arising under laws relating to liquor, narcotics, gambling, and firearms assigned to the Criminal Division by § 0.55(d)).

(b) Criminal proceedings arising under the internal revenue laws, except the following: Proceedings pertaining to misconduct of Internal Revenue Service personnel, to taxes on liquor, narcotics, firearms, coin-operated gambling and amusement machines, and to wagering, forcible rescue of seized property (26 U.S.C. 7212(b)), corrupt or forcible interference with an officer or employee acting under the Internal Revenue laws (26 U.S.C. 7212(a)), unauthorized disclosure of information (26 U.S.C. 7213), and counterfeiting, mutilation, removal, or reuse of stamps (26 U.S.C. 7208).

(c) (1) Enforcement of tax liens, and mandamus, injunctions, and other special actions or general matters arising in connection with internal revenue matters.

(2) Defense of actions arising under section 2410 of Title 28 of the United States Code whenever the United States is named as a party to an action as the result of the existence of a Federal tax lien, including the defense of other actions arising under section 2410, if any, involving the same property whenever a tax-lien action is pending under that section.

(d) Appellate proceedings in connection with civil and criminal cases enumerated in paragraphs (a) through (c) of this section and in § 0.71, including petitions to review decisions of the Tax Court of the United States.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 960-81, 46 FR 52346, Oct. 27, 1981]

§ 0.71 Delegation respecting immunity matters.

The Assistant Attorney General in charge of the Tax Division is authorized to handle matters involving the immunity of the Federal Government from State or local taxation (except actions to set aside ad valorem taxes, assessments, special assessments, and tax sales of Federal real property, and matters involving payments in lieu of taxes), as well as State or local taxation involving contractors performing contracts for or on behalf of the United States.

Subpart O—Justice Management Division

NOTE: Nomenclature changes to Subpart O, appear in Order No. 899-80, 45 FR 43703, June 30, 1980.

§ 0.75 Policy functions.

The Assistant Attorney General for Administration shall head the Justice Management Division and shall provide advice relating to basic Department policy for budget and financial management, program evaluation, auditing, personnel management and training, procurement, information processing and telecommunications, security and for all matters pertaining to organization, management, and administration. The following matters are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General for Administration:

(a) Conduct, direct, review, and evaluate management studies and surveys of the Department's organizational structure, functions, and programs, operating procedures and supporting systems, and management practices throughout the Department; and make recommendations to reduce costs and increase productivity.

(b) Supervise, direct, and review the preparation, justification and execution of the Department of Justice budget, including the coordination and control of the programming and reprogramming of funds.

(c) Review, analyze, and coordinate the Department's programs and activities to ensure that the Department's use of resources and estimates of future requirements are consistent with the policies, plans, and mission priorities of the Attorney General.

(d) Plan, direct, and coordinate Department-wide personnel management programs, and develop and issue Department-wide policy in all personnel program areas, including training, position classification and pay administration, staffing, employee performance evaluation, employee development, employee relations and services, employee recognition and incentives, equal employment opportunity programs, including the equal opportunity recruitment program (5 U.S.C. 7201), personnel program evaluation, labor management relations, adverse action hearings and appeals, employee grievances, and employee health programs.

(e) Develop and direct Department-wide financial management policies, programs, procedures, and systems including financial accounting, planning, analysis, and reporting.

(f) Supervise and direct the operation of the Department's central payroll system, automated information services, publication services, library services and any other Department-wide central services which are established by or assigned to the Justice Management Division.

(g) Formulate and administer the General Administration Appropriation of the Department's budget.

(h) Formulate Department-wide audit policies, standards and procedures; develop, direct and supervise independent and comprehensive internal audits, including examinations authorized by 28 U.S.C. 526, of all organizations, programs, and functions of the Department, and audits of expenditures made under the Department's contracts and grants to ensure compliance with laws, regulations and generally accepted accounting principles; economy and efficiency in operation; and that desired results are being achieved.

(i) Develop and direct a Department-wide directives management program and administer the directives management system.

(j) Plan, direct, administer, and monitor compliance with Department-wide policies, procedures, and regulations concerning records, reports, procurement, printing, graphics, audiovisual activities (including the approval or disapproval of production and equipment requests), forms management, supply management, motor vehicles, real and personal property, space assignment and utilization, and all other administrative services functions.

(k) Formulate Department policies, standards, and procedures for information systems and the management and use of automatic data processing equipment; review the use and performance of information systems with respect to Department objectives, plans, policies, and procedures; provide technical leadership and support to new Department-wide information systems; review and approve all contracts for information processing let by the Department, and provide the final review and approval of systems and procedures and standards for use of data elements and codes.

(l) Formulate policies, standards, and procedures for Department telecommunications systems and equipment and review their implementation.

(m) Provide computer and digital telecommunications services on an equitable resource-sharing basis to all organizational units within the Department.

(n) Formulate Department policies for the use of consultants and non-personal service contracts, review, and approve all nonpersonal service contracts, and review the implementation of Department policies.

(o) Serve as liaison with state and local governments on management affairs, and coordinate the Department's participation in Federal regional interagency bodies.

(p) Direct all Department security programs including personnel, physical, document, information processing and telecommunications, special intelligence, and employee health and safety programs and formulate and implement Department defense mobilization and contingency planning.

(q) Review legislation for potential impact on the Department's resources.

(r) Develop and implement a legal information coordination system for the use of the Department of Justice and, as appropriate, the Federal Government as a whole.

(5 U.S.C. 301, 22 U.S.C. 263a and 28 U.S.C. 509 and 510)

[Order No. 543-73, 38 FR 29585, Oct. 26, 1973, as amended by Order No. 565-74, 39 FR 15875, May 6, 1974; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 722-77, 42 FR 25499, May 18, 1977; Order No. 960-81, 46 FR 52346, Oct. 27, 1981]

§ 0.76 Specific functions.

The functions delegated to the Assistant Attorney General for Administration by this Subpart 0 shall also include the following specific policy functions:

(a) Directing the Department's financial management operations, including control of the accounting for appropriations and expenditures, employment limitations, voucher examination and audit, overtime pay, establishing per diem rates, promulgation of policies for travel, transportation, and relocation expenses, and issuance of necessary regulations pertaining thereto.

(b) Submission of requests to the Office of Management and Budget for apportionment or reapportionment of appropriations, including the determination, whenever required, that such apportionment or reapportionment indicates the necessity for the submission of a request for a deficiency or supplemental estimate, and to make allotments to organizational units of the Department of funds made available to the Department within the limits of such apportionments or reapportionments (31 U.S.C. 665).

(c) Approving per diem allowances for travel by airplane, train or boat outside the continental United States in accordance with paragraph 1-7.2 of the Federal Travel Regulations (FPMR 101-7).

(d) Exercising the claims settlement authority under the Federal Claims Collection Act of 1966 (31 U.S.C. 952).

(e) Authorizing payment of actual expense of subsistence (5 U.S.C. 5702(c)).

(f) Prescribing regulations providing for premium pay pursuant to 5 U.S.C. 5541-5550a.

(g) Settling and authorizing payment of employee claims under the Military and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243).

(h) Submitting requests to the Comptroller General for decisions (31 U.S.C. 74, 82d) and deciding questions involving the payment of $25 or less (Comp. Gen. B-161457, July 14, 1976).

(i) Making determinations with respect to employment and wages under section 3122 of the Federal Insurance Contributions Act (26 U.S.C. 3122).

(j) Excluding the Office of Justice Assistance, Research and Statistics, supervising and directing the Department's procurement and contracting functions and assuring that equal employment opportunity is practiced by the Department's contractors and subcontractors and in federally assisted programs under the Department's control.

(k) Designating Contracts Compliance Officers pursuant to Executive Order 11246, as amended.

(l) Making the certificate required with respect to the necessity for including illustrations in printing (44 U.S.C. 1104).

(m) Making the certificates with respect to the necessity of long distance telephone calls (31 U.S.C. 680a).

(n) Making certificates of need for space (68 Stat. 518, 519).

(o) Exercising, except for the authority conferred in §§ 0.15(b)(1), 0.19(a)(1), 0.137, and 0.138 of Part 0, the power and authority vested in the Attorney General to take final action on matters pertaining to the employment, separation, and general administration of personnel in General Schedule grade GS-1 through GS-15, and in wage board positions; classify positions in the Department under the General Schedule and wage board systems regardless of grade; postaudit and correct any personnel action within the Department; and inspect at any time any personnel operations of the various organizational units of the Department.

(p) Selecting and assigning employees for training by, in, or through non-Government facilities, paying the expenses of such training or reimbursing employees therefor, and preparing and submitting the required annual report to the Office of Personnel Management (5 U.S.C. 4103-4118).

(q) Exercising authority for the temporary employment of experts or consultants of organizations thereof, including stenographic reporting services (5 U.S.C. 3109(b)).

(r) Providing assistance in furnishing information to the public under the Public Information Section of the Administrative Procedure Act (5 U.S.C. 552).

(s) Representing the Department in its contacts on matters relating to administration and management with the Congressional Appropriations Committees, Office of Management and Budget, the General Accounting Office, the Office of Personnel Management, the General Services Administration, the Joint Committee on Printing, the Government Printing Office and all other Federal departments and agencies.

(t) Taking final action, including making all required determinations and findings, in connection with the acquisition of real property for use by the Department of Justice.

[Order No. 543-73, 38 FR 29585, Oct. 26, 1973, as amended by Order No. 583-74, 39 FR 41977, Dec. 4, 1974; Order No. 634-75, 40 FR 58644, Dec. 18, 1975; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 722-77, 42 FR 25499, May 18, 1977; Order No. 740-77, 42 FR 40433, Aug. 10, 1977; Order No. 800-78, 43 FR 43297, Sept. 25, 1978; Order No. 960-81, 46 FR 52346, Oct. 27, 1981]

§ 0.77 Operational functions.

The Assistant Attorney General for Administration shall provide all direct administrative support services to the Offices, Boards and Divisions of the Department and to the United States Marshals Service, except where independent administrative authority has been conferred. These services shall include the following:

(a) Planning, directing and coordinating the personnel management program; providing personnel services including employment and staffing, employee relations, and classification, and including the employment, separation and general administration of employees, except attorneys, in General Schedule grades GS-15 and below, or equivalent pay levels.

(b) Formulating policies and plans for efficient administrative management and organization and developing and coordinating all management studies and reports on the operations of the Offices, Divisions and Boards.

(c) Planning, justifying, and compiling the annual and supplemental budget estimates of the Offices, Divisions and Boards.

(d) Planning, directing and executing accounting operations for the Offices, Divisions and Boards.

(e) Providing information systems analysis, design, computer programming, and systems implementation services consistent with Departmental information systems plans, policies and procedures.

(f) Implementing and administering management programs for the creation, organization, maintenance, use, and disposition of Federal records, and providing mail and messenger service.

(g) Implementing and administering programs for procurement, personal property, and supply, motor vehicle and space management.

(h) Operating and maintaining the Department Library.

(i) Routing and controlling correspondence, maintaining indices of legal cases and matters, replying to correspondence not assignable to a division, safeguarding confidential information, attesting to the correctness of records, and related matters.

(j) Accepting service of summons, complaints or other papers, as a representative of the Attorney General, under the Federal Rules of Civil and Criminal Procedure or in any suit within the purview of subsection (a) of Section 208 of the Department of Justice Appropriation Act, 1953 (66 Stat. 560 (43 U.S.C. 666(a)).

(k) Making the certificates required in connection with the payment of expenses of collecting evidence: *Provided*, That each such certificate shall be approved by the Attorney General.

(l) Taking final action, including making all required determinations and findings, in connection with negotiated purchases and contracts as provided in 41 U.S.C. 252(c) (1)-(11), (14), (15) except that the authority provided in 41 U.S.C. 252(c)(11) shall be limited not to exceed an expenditure of $25,000 per contract and shall not be further delegated.

(m) Serving as Contracting Officer for the Offices, Boards and Divisions, with authority of redelegation to the Deputy Assistant Attorney General, Office of Personnel and Administration, Justice Management Division. The authority so delegated includes the authority of redelegation to subordinates and to officials within the Offices, Boards and Divisions.

(n) Authorizing payment of extraordinary expenses incurred by ministerial officers of the United States in executing acts of Congress (28 U.S.C. 1929).

(o) Representing the Attorney General with the Secretary of State in arranging for reimbursement by foreign governments of expenses incurred in extradition cases, and certifying to the Secretary the amounts to be paid to the United States as reimbursement (18 U.S.C. 3195).

[Order No. 565-74, 39 FR 15876, May 6, 1974; as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 722-77, 42 FR 25499, May 18, 1977; Order No. 960-81, 46 FR 52347, Oct. 27, 1981]

§ 0.78 Implementation of financial disclosure requirements.

The Assistant Attorney General for Administration shall serve as the designated agency ethics official under Title II of the Ethics in Government Act of 1978, 92 Stat. 1836, for purposes of administering the public and confidential financial disclosure programs applicable to officers and employees of the Department of Justice. His duties shall include the following:

(a) Providing necessary report forms and other information to officers and employees of the Department;

(b) Developing and maintaining a list of positions covered by the public and confidential financial reporting requirements;

(c) Monitoring compliance by department officers and employees with applicable requirements for filing and review of financial disclosure reports;

(d) Providing for retention of reports and transmittal, where necessary, of copies of reports to the Director of the Office of Government Ethics;

(e) Establishing procedures for public access to reports filed under Title II of the Ethics in Government Act of 1978;

(f) Performing such other functions as may be necessary for the effective implementation of Title II of the Ethics in Government Act.

[Order No. 832-79, 44 FR 29891, May 23, 1979, as amended by Order No. 960-81, 46 FR 52347, Oct. 27, 1981]

§ 0.79 Redelegation of authority.

The Assistant Attorney General for Administration is authorized to redelegate to any Department official any of the power or authority vested in him by this Subpart O. Existing redelegations by the Assistant Attorney General for Administration shall continue in force and effect until modified or revoked.

[Order No. 543-73, 38 FR 29585, Oct. 26, 1973. Redesignated by Order No. 565-74, 39 FR 15876, May 6, 1974, and further redesignated by Order No. 832-79, 44 FR 29891, May 23, 1979]

Subpart P—Federal Bureau of Investigation

CROSS REFERENCE: For regulations pertaining to the Federal Bureau of Investigation, see Part 3 of this chapter.

§ 0.85 General functions.

The Director of the Federal Bureau of Investigation shall:

(a) Investigate violations of the laws, including the criminal drug laws, of the United States and collect evidence in cases in which the United States is or may be a party in interest, except in cases in which such responsibility is by statute or otherwise specifically assigned to another investigative agency. The Director's authority to investigate violations of and collect evidence in cases involving the criminal drug laws of the United States is concurrent with such authority of the Administrator of the Drug Enforcement Administration under § 0.100 of this part. In investigating violations of such laws and in collecting evidence in such cases, the Director may exercise so much of the authority vested in the Attorney General by sections 1 and 2 of Reorganization Plan No. 1 of 1968, section 1 of Reorganization Plan No. 2 of 1973 and the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, as he determines is necessary. He may also release FBI information on the same terms and for the same purposes that the Administrator of the Drug Enforcement Administration may disclose DEA information under § 0.103 of this part.

(b) Conduct the acquisition, collection, exchange, classification and preservation of fingerprint cards and identification records from criminal justice and other governmental agencies, including fingerprint cards voluntarily submitted by individuals for personal identification purposes; provide expert testimony in Federal, State and local courts as to fingerprint examinations; and provide fingerprint training and provide identification assistance in disasters and for other humanitarian purposes.

(c) Conduct personnel investigations requisite to the work of the Department of Justice and whenever required by statute or otherwise.

(d) Carry out the Presidential directive of September 6, 1939, as reaffirmed by Presidential directives of January 8, 1943, July 24, 1950, and December 15, 1953, designating the Federal Bureau of Investigation to take charge of investigative work in matters relating to espionage, sabotage, subversive activities, and related matters.

(e) Establish and conduct law enforcement training programs to provide training for State and local law enforcement personnel; operate the Federal Bureau of Investigation National Academy; develop new approaches, techniques, systems, equipment, and devices to improve and strengthen law enforcement and assist in conducting State and local training programs, pursuant to section 404 of the Omnibus Crime Control and Safe Streets Act of 1968, 82 Stat. 204.

(f) Operate a central clearinghouse for police statistics under the Uniform Crime Reporting Program, and a computerized nationwide index of law enforcement information under the National Crime Information Center.

(g) Operate the Federal Bureau of Investigation Laboratory to serve not only the Federal Bureau of Investigation, but also to provide, without cost, technical and scientific assistance, including expert testimony in Federal or local courts, for all duly constituted law enforcement agencies, other organizational units of the Department of Justice, and other Federal agencies, which may desire to avail themselves of the service. As provided for in procedures agreed upon between the Secretary of State and the Attorney General, the services of the Federal Bureau of Investigation Laboratory may also be made available to foreign law enforcement agencies and courts.

(h) Make recommendations to the Office of Personnel Management in connection with applications for retirement under 5 U.S.C. 8336(c).

(i) Investigate alleged fraudulent conduct in connection with operations of the Department of Housing and Urban Development and other alleged violations of the criminal provisions of the National Housing Act, including 18 U.S.C. 1010.

(j) Exercise the power and authority vested in the Attorney General to approve and conduct exchanges of identification records with officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions and, if authorized by State statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing; and exercise the power and authority vested in the Attorney General by 15 U.S.C. 78q(f)(2) and 7 U.S.C. 12a, to approve and conduct exchanges of identification records with certain segments of the securities industry and the Commodity Futures Trading Commission, respectively.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 884-80, 45 FR 22023, Apr. 3, 1980; Order No. 960-81, 46 FR 52347, Oct. 27, 1981; Order No. 967-82, 47 FR 4513, Feb. 1, 1982; Order No. 968-82, 47 FR 4989, Feb. 3, 1982]

§ 0.85a Criminal justice policy coordination.

The Federal Bureau of Investigation shall report to the Attorney General on all its activities.

[Order No. 960-81, 46 FR 52347, Oct. 27, 1981]

§ 0.86 Seizure of gambling devices.

The Director, Associate Director, Assistants to the Director, Executive Assistant Directors, Assistant Directors, inspectors and agents of the Federal Bureau of Investigation are authorized to exercise the power and authority vested in the Attorney General to make seizures of gambling devices (18 U.S.C. 1955(d), 15 U.S.C. 1171 *et seq.*) and wire or oral communication intercepting devices (18 U.S.C. 2513).

[Order No. 960-81, 46 FR 52347, Oct. 27, 1981]

§ 0.87 Representation on committee for visit-exchange.

The Director of the Federal Bureau of Investigation shall be a member of the committee which represents the Department of Justice in the development and implementation of plans for exchanging visits between the Iron Curtain countries and the United States and shall have authority to designate an alternate to serve on such committee.

§ 0.88 Certificates for expenses of unforeseen emergencies.

The Director of the Federal Bureau of Investigation is authorized to exercise the power and authority vested in the Attorney General by 28 U.S.C. 537, to make certificates with respect to expenses of unforeseen emergencies of a confidential character: *Provided,* That each such certificate made by the Director of the Federal Bureau of Investigation shall be approved by the Attorney General.

§ 0.89 Authority to seize arms and munitions of war.

The Director of the Federal Bureau of Investigation is authorized to exercise the authority conferred upon the Attorney General by section 1 of E.O. No. 10863 of February 18, 1960 (25 FR 1507), relating to the seizure of arms and munitions of war, and other articles, pursuant to section 1 of title VI of the act of June 15, 1917, 40 Stat. 223, as amended by section 1 of the act of August 13, 1953, 67 Stat. 577 (22 U.S.C. 401).

§ 0.89a Delegations respecting claims against the FBI.

(a) The Director of the Federal Bureau of Investigation is authorized to exercise the power and authority vested in the Attorney General under 28 U.S.C. 2672 to consider, ascertain, adjust, determine, and settle any claim thereunder not exceeding $5,000 in any one case caused by the negligent or wrongful act or omission of any employee of the Federal Bureau of Investigation.

(b) The Director of the Federal Bureau of Investigation is further authorized to exercise the power and authority vested in the Attorney General under the Act of March 20, 1936, Ch. 159, Pub. L. 74-481, 49 Stat. 1184 (31 U.S.C. 224b) with regard to claims thereunder not exceeding $500 in any one case.

(c) The Director of the Federal Bureau of Investigation is authorized to redelegate to the Assistant Director, Legal Counsel Division, or his designee within that division, any of the authority, functions, or duties vested in him by paragraphs (a) and (b) of this section. This authority shall not be further redelegated.

[Order No. 884-80, 45 FR 22023, Apr. 3, 1980]

Subpart P-1—Office of Justice Assistance, Research and Statistics and Related Agencies

Authority: 28 U.S.C. 509 and 510, 5 U.S.C. 301 and 8 U.S.C. 1103.

Source: Order No. 960-81, 46 FR 52347, Oct. 27, 1981, unless otherwise noted.

§ 0.90 Office of Justice Assistance, Research and Statistics.

The Office of Justice Assistance, Research and Statistics is headed by a Director. Under the general authority and policy control of the Attorney General, the Director provides staff support to, and coordinates the activities of, the National Institute of Justice, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention and the Law Enforcement Assistance Administration.

§ 0.91 National Institute of Justice.

The National Institute of Justice is headed by a Director. Under the general authority of the Attorney General the Director performs functions and administers programs, including grantmaking, under 42 U.S.C. 3721-3724, 3781-3789o to support basic and applied research into justice issues.

§ 0.92 Bureau of Justice Statistics.

The Bureau of Justice Statistics is headed by a Director. Under the general authority of the Attorney General the Director performs functions and administers programs, including grantmaking, under 42 U.S.C. 3731-3735, 3781-3789o to provide a variety of statistical services for the criminal justice community.

§ 0.93 Office of Juvenile Justice and Delinquency Prevention.

The Office of Juvenile Justice and Delinquency Prevention is headed by an Administrator. Under the general authority of the Attorney General the Administrator performs functions and administers programs, including grantmaking, under 42 U.S.C. 3781-3789o, 5601 *et seq.*, relating to juvenile delinquency and the improvement of juvenile justice systems.

§ 0.94 The Law Enforcement Assistance Administration.

The Law Enforcement Assistance Administration is headed by an Administrator. Under the general authority of the Attorney General the Administrator performs functions and administers programs, including grantmaking, under 42 U.S.C. 3711-3713, 3741 *et seq.*, 3781-3789o, relating to the administration of criminal justice systems. The Administrator also administers Public Safety Officers Death Benefits (42 U.S.C. 3796 *et seq.*).

(a) Subject to the general supervision and direction of the Attorney General, the Administrator of the Law Enforcement Assistance Administration is authorized to exercise the power and authority vested in the Attorney General by Executive Order No. 11755 of December 29, 1973, with respect to certification and revoking certification of work-release laws or regulations.

(b) The Administrator of LEAA is authorized to redelegate to any of his subordinates any of the authority delegated to him by § 0.94(a).

Subpart Q—Bureau of Prisons

CROSS REFERENCE: For regulations pertaining to the Bureau of Prisons, see Parts 6 and 7 of this chapter.

§ 0.95 General functions.

The Director of the Bureau of Prisons shall direct all activities of the Bureau of Prisons including:

(a) Management and regulation of all Federal penal and correctional institutions (except military or naval institutions), and prison commissaries.

(b) Provision of suitable quarters for, and safekeeping, care, and subsistence of, all persons charged with or convicted of offenses against the United States or held as witnesses or otherwise.

(c) Provision for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States.

(d) Classification, commitment, control, or treatment of persons committed to the custody of the Attorney General.

(e) Payment of rewards with respect to escaped Federal prisoners (18 U.S.C. 3059).

(f) Certification with respect to the insanity or mental incompetence of a prisoner whose sentence is about to expire pursuant to section 4247 of Title 18 of the United States Code.

(g) Entering into contracts with State or territorial officials for the custody, care, subsistence, education, treatment, and training of State or territorial prisoners, upon certification with respect to the availability of proper and adequate treatment facilities and personnel, pursuant to section 5003 of Title 18 of the United States Code.

(h) Conduct of studies and the preparation and submission of reports and recommendations to committing courts respecting disposition of cases in which defendants have been committed for such purposes pursuant to 18 U.S.C. 4205(c).

(i) Conduct and prepare, or cause to be conducted and prepared, studies and submit reports to the court and the attorneys with respect to disposition of cases in which juveniles have been committed, pursuant to 18 U.S.C. 5037, and to contract with public or private agencies or individuals or community-based facilities for the observation and study and the custody and care of juveniles, pursuant to 18 U.S.C. 5040.

(j) Observation, conduct of studies, and preparation of reports in cases in which youth offenders have been committed by the courts for such purposes pursuant to section 5010(e) of Title 18 of the United States Code.

(k) Conduct of examinations to determine whether an offender is an addict and is likely to be rehabilitated through treatment, as well as the preparation and submission of reports to committing courts, pursuant to section 4252 of Title 18 of the United States Code.

(l) Transmittal of reports of boards of examiners and certificates to clerks of the district courts pursuant to section 4245 of Title 18 of the United States Code.

(m) Providing technical assistance to State and local governments in the improvement of their correctional systems (18 U.S.C. 4042).

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 579-74, 39 FR 37771, Oct. 24, 1974; Order No. 960-81, 46 FR 52348, Oct 27, 1981]

§ 0.96 Delegations.

The Director of the Bureau of Prisons is authorized to exercise or perform any of the authority, functions, or duties conferred or imposed upon the Attorney General by any law relating to the commitment, control, or treatment of persons (including insane prisoners and juvenile delinquents) charged with or convicted of offenses against the United States, including the taking of final action in the following-described matters:

(a) Requesting the detail of Public Health Service officers for the purpose of furnishing services to Federal penal and correctional institutions (18 U.S.C. 4005).

(b) Consideration, determination, adjustment, and payment of claims in accordance with section 1 of the act of June 10, 1949, 63 Stat. 167 (31 U.S.C. 238).

(c) Designating places of confinement where the sentences of prisoners shall be served, and ordering transfers from one institution to another whether maintained by the Federal Government or otherwise (18 U.S.C. 4082).

(d) Extending the limits of the place of confinement of prisoners for the purposes specified, and within the limits established, by section 4082 of Title 18 of the United States Code, and otherwise performing the functions of the Attorney General under that section.

(e) Designation of agents for the transportation of prisoners (18 U.S.C. 4008).

(f) Accepting gifts or bequests of money for credit to the "Commissary Funds, Federal Prisons" (31 U.S.C. 725s).

(g) Prescribing regulations for the use of surplus funds in "Commissary Funds, Federal Prisons" to provide advances not in excess of $150 to prisoners at the time of their release (18 U.S.C. 4284).

(h) Allowance, forfeiture, and restoration of all good time (18 U.S.C. 4161, 4162, 4165, and 4166).

(i) Release of prisoners held solely for nonpayment of fine (18 U.S.C. 3569).

(j) Furnishing transportation, clothing, and payments to released prisoners (18 U.S.C. 4281).

(k) Removal of insane prisoners to suitable institutions and retransfer to penal or correctional institutions upon recovery (18 U.S.C. 4241, 4242).

(l) Settlement of claims arising under the Federal Tort Claims Act if the amount of settlement does not exceed $2,500. (See 28 CFR 0.172.)

(m) Entering into reciprocal agreements with fire organizations for mutual aid and rendering emergency assistance in connection with extinguishing fires within the vicinity of a Federal correctional facility, as authorized by sections 2 and 3 of the Act of May 27, 1955. (42 U.S.C. 1856a, 1856b.)

(n) Deciding upon requests by states for temporary transfers of custody of inmates for prosecution under Article IV of the Interstate Agreement on Detainers (84 Stat. 1399) and pursuant to other available procedures; and receiving and reviewing requests by the executive authority of states or the District of Columbia for, and authorizing the transfer of, inmates pursuant to 18 U.S.C. 4085.

(o) The approval of the operation or contracts for the operation, by pretrial services agencies with the cooperation of the Administrative Office of the United States Courts, of appropriate facilities for the custody or care of persons released pursuant to the Speedy Trial Act of 1974.

(p) Prescribing rules and regulations applicable to the carrying of firearms by Bureau of Prisons officers and employees. (18 U.S.C. 3050).

(q) Promulgating rules governing the control and management of Federal penal and correctional institutions and providing for the classification, government, discipline, treatment, care, rehabilitation, and reformation of inmates confined therein.

(r) Establishing and designating Bureau of Prisons Institutions (18 U.S.C. 4001, 4042, 4082).

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 454-71, 36 FR 6748, Apr. 8, 1971; Order No. 422-71, 36 FR 12212, June 29, 1971; Order No. 641-76, 41 FR 8346, Feb. 26, 1976; Order No. 648-76, 41 FR 19220, May 11, 1976; Order No. 675-76, 41 FR 56802, Dec. 30, 1976; Order No. 941-81, 46 FR 23051, Apr. 25, 1981; Order No. 960-81, 46 FR 52348, Oct. 27, 1981]

§ 0.96a Interstate Agreement on Detainers.

The Director of the Bureau of Prisons is designated as the United States Officer under Article VII of the Interstate Agreement on Detainers (84 Stat. 1402).

[Order No. 462-71, 36 FR 12212, June 29, 1971]

§ 0.96b Exchange of prisoners.

The Director of the Bureau of Prisons and officers of the Bureau of Prisons designated by him are authorized to receive custody of offenders and to transfer offenders to and from the United States of America under a treaty as referred to in Pub. L. 95-144; to make arrangements with the States and to receive offenders from the States for transfer to a foreign country; to act as an agent of the United States to receive the delivery from a foreign government of any person being transferred to the United States under such a treaty; to render to foreign countries and to receive from them certifications and reports required under a treaty; and to receive custody and carry out the sentence of imprisonment of such a transferred offender as required by that statute and any such treaty.

[Order No. 758-77, 42 FR 63139, Dec. 15, 1977]

§ 0.97 Redelegation of authority.

The Director of the Bureau of Prisons is authorized to redelegate to any of his subordinates any of the authority, functions, or duties vested in him by this Subpart Q. Existing redelegations by the Director of the Bureau of Prisons shall continue in force and effect until modified or revoked.

§ 0.98 Functions of Commissioner of Federal Prison Industries.

The Director of the Bureau of Prisons is authorized as ex officio Commissioner of Federal Prison Industries and in accordance with the policy fixed by its Board of Directors to:

(a) Exercise jurisdiction over all industrial enterprises in all Federal penal and correctional institutions.

(b) Sponsor vocational training programs in Federal penal and correctional institutions.

(c) Contract for the transfer of property or equipment from the District of Columbia for industrial employment and training of prisoners confined in a penal or correctional institution of the District of Columbia, pursuant to 18 U.S.C. 4122.

§ 0.99 Compensation to Federal prisoners.

The Board of Directors of Federal Prison Industries, or such officer of the corporation as the Board may designate, may exercise the authority vested in the Attorney General by section 4126 of Title 18 of the United States Code, as amended, to prescribe rules and regulations governing the payment of compensation to inmates of Federal penal and correctional institutions employed in any industry, or performing outstanding services in institutional operations, and to inmates or their dependents for injuries suffered in any industry or in any work activity in connection with the maintenance of operation of the institution where confined.

APPENDIX TO SUBPART Q

CONFINEMENT OF PERSONS IN DISTRICT OF COLUMBIA CORRECTIONAL INSTITUTIONS

By virtue of the authority vested in me by the Act of September 1, 1916, 39 Stat. 711 (D.C. Code section 24-402), by section 11 of the Act of July 15, 1932, as added by the Act of June 6, 1940, 54 Stat. 244 (D.C. Code section 24-425), and by the Act of September 10, 1965 (18 U.S.C. 4082).

(a) The Mayor of the District of Columbia or his authorized representative is hereby authorized to transfer such prisoners as may be in his custody and supervision, by virtue of having been placed in a correctional institution of the District of Columbia pursuant to the authority of the Attorney General, from such institution to any available, suitable, or appropriate institution or facility (including a residential community treatment center) within the District of Columbia, and the Mayor or his authorized representative is further authorized to extend the limits of the place of confinement of such prisoners for the purposes specified, and within the limits established, by the Act of September 10, 1965 (18 U.S.C. 4082).

(b) The authority conferred by subsection (a) shall not include any extension of the limits of confinement for any prisoner serving a sentence for a crime of violence and not participating in a furlough program as of December 22, 1976, unless such prisoner has served at least twelve months, has not been denied parole, without recommendation for furlough, at his most recent parole hearing (whether such hearing was held before or after extension of the limits of his confinement was granted), and

(1) Is within twelve months of the expiration of his maximum sentence, without reduction, or

(2) Is within twelve months of a date on which he will be eligible for parole from confinement, or

(3) Has served at least ninety percent of his minimum sentence, without reduction.

By October 15 of each year, there shall be submitted to the Associate Attorney General a report concerning each prisoner serving a sentence for a crime of violence whose limits of confinement have been extended during the twelve-month period ending the preceding September 30, indicating the offense and term for which, and the court by which, the prisoner was sentenced with respect to his present confinement; all other criminal offenses of which the prisoner has been convicted; the date, duration and purpose of each extension of the limits of his confinement; all parole board actions with respect to the prisoner; and all infractions of the terms of extension, violations of prison rules, or criminal offenses with which the prisoner has been officially charged since the beginning of his confinement.

(c) With respect to all other prisoners, the authority conferred by subsection (a) may be exercised by an authorized representative designated by the Mayor.

(d) As used in this Order "crime of violence" means murder, manslaughter, rape, kidnapping, robbery, burglary, assault with intent to kill, assault with intent to rape, assault with intent to rob or extortion involving the threat or use of violence to person.

[Order No. 636-76, 41 FR 3289, Jan. 26, 1976, as amended by Order No. 676-76, 41 FR 56802, Dec. 30, 1976; Order No. 960-81, 46 FR 52348, Oct. 27, 1981]

Subpart R—Drug Enforcement Administration

§ 0.100 General functions.

The following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Administrator of the Drug Enforcement Administration:

(a) Functions vested in the Attorney General by sections 1 and 2 of Reorganization Plan No. 1 of 1968.

(b) Functions vested in the Attorney General by the Comprehensive Drug Abuse Prevention and Control Act of 1970.

(c) Functions vested in the Attorney General by section 1 of Reorganization Plan No. 2 of 1973 and not otherwise specifically assigned.

[Order No. 520-73, 38 FR 18380, July 10, 1973, as amended by Order No. 960-81, 46 FR 52348, Oct. 27, 1981]

§ 0.101 Specific functions.

The Administrator of the Drug Enforcement Administration shall be responsible for:

(a) The development and implementation of a concentrated program throughout the Federal Government for the enforcement of Federal drug laws and for cooperation with State and local governments in the enforcement of their drug abuse laws.

(b) The development and maintenance of a National Narcotics Intelligence System in cooperation with Federal, State, and local officials, and the provision of narcotics intelligence to any Federal, State, or local official that the Administrator determines has a legitimate official need to have access to such intelligence.

(c) The development and implementation of a procedure to release property seized under Section 511 of the Controlled Substances Act (21 U.S.C. 881) to any innocent party having an immediate right to possession of the property, when the Administrator, in his discretion, determines it is not in the interests of justice to initiate forfeiture proceedings against the property.

(28 U.S.C. 509 and 510; 21 U.S.C. 881(d))

[Order No. 520-73, 38 FR 18380, July 10, 1973, as amended by Order No. 565-74, 39 FR 15876, May 6, 1974; Order No. 898-80, 45 FR 44267, July 1, 1980; Order No. 960-81, 46 FR 52348, Oct. 27, 1981]

§ 0.102 Drug enforcement policy coordination.

The Administrator of the Drug Enforcement Administration shall perform his functions under the general supervision of the Director of the Federal Bureau of Investigation and shall report through him to the Attorney General, the Deputy Attorney General and the Associate Attorney General, as appropriate.

[Order No. 968-92, 47 FR 4989, Feb. 3, 1982]

§ 0.103 Release of information.

(a) The Administrator of DEA is authorized—

(1) To release information obtained by DEA and DEA investigative reports to Federal, State, and local officials engaged in the enforcement of laws related to controlled substances.

(2) To release information obtained by DEA and DEA investigative reports to Federal, State, and local prosecutors, and State licensing boards, engaged in the institution and prosecution of cases before courts and licensing boards related to controlled substances.

(3) To authorize the testimony of DEA officials in response to subpoenas issued by the prosecution in Federal, State, or local criminal cases involving controlled substances.

(b) Except as provided in paragraph (a) of this section, all other production of information or testimony of DEA officials in response to subpoenas or demands of courts or other authorities is governed by Subpart B of Part 16 of this chapter. However, it should be recognized that Subpart B is not intended to restrict the release of noninvestigative information and reports as deemed appropriate by the Administrator of DEA. For example, it does not inhibit the exchange of information between governmental officials concerning the use and abuse of controlled substances as provided for by section 503(a)(1) of the Controlled Substances Act (21 U.S.C. 873(a)(1)).

[Order No. 520-73, 38 FR 18380, July 10, 1973]

§ 0.104 Redelegation of authority.

The Administrator of the Drug Enforcement Administration is authorized to redelegate to any of his subordinates any of the powers and functions vested in him by this Subpart R.

[Order No. 520-73, 38 FR 18380, July 10, 1973]

APPENDIX TO SUBPART R

[Directive 73-1]

REDELEGATION OF FUNCTIONS

SECTION 1. *Scope of authority.* The authority delegated by this Directive is applicable to all officers and employees of the Drug Enforcement Administration. All regulations or other action made, prescribed, issued, granted or performed in respect of or by the agencies or functions affected by section 1 of Reorganization Plan No. 2 of 1973 shall, until rescinded, modified, superceded, or made inapplicable, have the same effect as if the reorganization had not been made. Except, that until further consideration may be given to establishing the course and methods by which the Drug Enforcement Administration's procedural, administrative and operational functions are channeled and carried out, all of the procedures, guidelines, regulations, manuals, papers, documents, forms, and reports previously utilized by the former Bureau of Narcotics and Dangerous Drugs shall be applicable to the functions of all units and employees of the Drug Enforcement Administration.

SEC. 2. *Supervisors and administrators.* (a) All persons having supervisory and administrative authority in the agencies from which functions were transferred to the Drug Enforcement Administration by Order 520-73, will continue to exercise those authorities with full force and effect until further notified.

(b) All Regional Directors are authorized to conduct enforcement hearings under 21 U.S.C. 883 with the concurrence of the Chief Counsel and to take custody of seized property in accordance with directions from the Administrator under 21 U.S.C. 881 to adjust, determine, compromise and settle any claim involving the Drug Enforcement Administration under 28 U.S.C. 2672 relating to tort claims where the claim does not exceed $500; to release information obtained by DEA and DEA investigative reports under 28 CFR 0.103(a) (1) and (2); and to authorize the testimony of DEA officials in response to prosecution subpoenas under 28 CFR 0.103(a)(3).

SEC. 3. *Enforcement officers.* (a) All criminal investigators (series 1811 under Civil Service Commission regulations) are authorized to exercise all of the powers of enforcement personnel granted by 21 U.S.C. 876, 878 and 879; to serve subpoenas, administer oaths, examine witnesses, and receive evidence under 21 U.S.C. 875; to execute administrative inspection warrants under 21 U.S.C. 880; and to seize property under 21 U.S.C. 881.

(b) All compliance investigators (series 1810 under Office of Personnel Management regulations) are authorized to administer oaths and serve subpoenas under 21 U.S.C. 875 and 876; to execute administrative inspection warrants under 21 U.S.C. 878(2) and 880; and to seize property incident to compliance and registration inspections and investigations under 21 U.S.C. 881.

(c) All Regional Administrators are authorized to sign and issue subpoenas under 21 U.S.C. 875 and 876; to conduct enforcement hearings under 21 U.S.C. 883 with the concurrence of the Acting Chief Counsel; and to take custody of and dispose of seized property in accordance with directions from the Administrator under 21 U.S.C. 881.

SEC. 4. *Legal functions.* The Chief Counsel is authorized to exercise all necessary functions with respect to decisions on petitions under 19 U.S.C. 1618 for remission or mitigation of forfeitures incurred under 21 U.S.C. 881; to execute under seal any certification required to authenticate any documents pursuant to § 0.146 of Title 28, Code of Federal Regulations; to adjust, determine, compromise, and settle any claims involving the Drug Enforcement Administration under 28 U.S.C. 2672, relating to tort claims where the amount of the proposed adjustment, compromise, settlement or award does not exceed $2,500; to formulate and coordinate the proceedings relating to the conduct of hearings under 21 U.S.C. 875, including the signing and issuance of subpoenas, examining of witnesses and receiving evidence; and to conduct enforcement hearings under 21 U.S.C. 883.

SEC. 5. *Import and export permits.* The Acting Chief, Registration and Audit Division is authorized to perform all functions with respect to the issuance of importation and exportation permits for controlled substances under 21 U.S.C. 952 and 953, and all functions in regard to transhipments and intransit shipments of controlled substances under 21 U.S.C. 954.

SEC. 6. *Promulgation of regulations.* The Deputy Administrator is authorized to exercise all necessary functions with respect to the promulgation and implementation of the following regulations published in Chapter II, Title 21, Code of Federal Regulations:

(a) Part 1301, incident to the registration of manufacturers, distributors, and dispensers of controlled substances, except that final orders in connection with suspension, denial or revocation of registration shall be made by the Administrator.

(b) Part 1302 relating to labelling and packaging requirements for controlled substances.

(c) Part 1304 relating to records and reports of registrants.

(d) Part 1305 relating to order forms.

(e) Part 1306 relating to prescriptions, except provisions relating to dispensing of narcotic drugs for maintenance purposes.

(f) Part 1307, Title 21, Code of Federal Regulations, relating to miscellaneous provisions, except § 1307.31 concerning special exempt persons.

(g) The following sections of Part 1308: §§ 1308.21 and 1308.22 relating to excluded nonnarcotic substances; §§ 1308.23 and 1308.24 relating to exempt chemical preparations; and §§ 1308.31 and 1308.32 relating to excepted stimulant or depressant compounds, except that any final order following a contested proposed rulemaking shall be made by the Administrator.

(h) Part 1311 relating to registration of importers and exporters of controlled substances, except that final orders in connection with suspension, denial or revocation of registration shall be made by the Administrator.

(i) Part 1312 relating to importation and exportation of controlled substances, except those functions specified in section 5 of this Appendix to Subpart R which are delegated to the Chief, Registration and Audit Division. Also, all final orders following a contested proposed rulemaking regarding the denial of an application for an import, export or transhipment permit shall be made by the Administrator.

SEC. 7. *Issuance of Subpoenas.*(a) The Chief Inspector, all Regional Directors, Deputy Regional Directors, Special Agents-In-Charge, Inspectors-in-Charge, and Resident Agents-In-Charge are authorized to issue subpoenas with respect to controlled substances under 21 U.S.C. 875 and 876 in regard to matters within their respective jurisdictions.

(b) The Administrative Law Judge is authorized to sign and issue subpoenas to compel the attendance of witnesses and the production of documents and materials to the extent necessary to conduct administrative hearings pending before him.

[Order No. 520-73, 38 FR 18380, July 10, 1973, as amended by Directive 73-2, 38 FR 34662, Dec. 17, 1973; Directive 74-1, 39 FR 4080, Feb. 1, 1974; Directive 74-2, 39 FR 10581, Mar. 21, 1974; Order No. 568-74, 39 FR 18646, May 29, 1974; Directive 44-3, 39 FR 40584, Nov. 19, 1974; Directive 75-1, 40 FR 4419, Jan. 30, 1975; Directive 76-1, 41 FR 22815, June 7, 1976; 42 FR 57457, Nov. 3, 1977; 44 FR 28801, May 17, 1979; 45 FR 81746, Dec. 12, 1980; Order No. 960-81, 46 FR 52348, Oct. 27, 1981]

Subpart S—Immigration and Naturalization Service

§ 0.105 General functions.

The Commissioner of the Immigration and Naturalization Service shall:

(a) Subject to the limitations contained in section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) and the provisions for review by the Board of Immigration Appeals, administer and enforce the Immigration and Nationality Act and all other laws relating to immigration (including, but not limited to, admission, exclusion, and deportation), naturalization, and nationality. Nothing in this paragraph shall be construed to authorize the Commissioner of Immigration and Naturalization to supervise the litigation of, or to approve the filing of records on review, appeals, or petitions for writs of certiorari or to intervene or have independent representation in cases under the immigration and nationality laws except as provided in paragraph (e) of this section.

(b) For the purposes of paragraph (a) of this section, and as limited therein, exercise or perform any of the authority, functions, or duties conferred or imposed upon the Attorney General by the laws mentioned in that paragraph, including the authority to issue regulations.

(c) Investigate alleged violations of the immigration and nationality laws, and make recommendations for prosecutions when deemed advisable.

(d) Patrol the borders of the United States to prevent the entry of aliens into the United States in violation of law.

(e) Supervise naturalization work in the specific courts designated by section 310 of the Immigration and Nationality Act (8 U.S.C. 1421) to have jurisdiction in such matters, including the requiring of accountings from the clerks of such courts for naturalization fees collected, investigation through field officers of the qualifications of citizenship applicants, and representation of the Government at all court hearings.

(f) Cooperate with the public schools in providing citizenship textbooks and other services for the preparation of candidates for naturalization.

(g) Register and fingerprint aliens in the United States, as required by section 262 of the Immigration and Nationality Act (8 U.S.C. 1304).

(h) Prepare reports on private bills pertaining to immigration matters.

(i) Designate within the Immigration and Naturalization Service a certifying officer, and an alternate, to certify copies of documents issued by the Commissioner, or his designee, which are required to be filed with the Office of the Federal Register.

(j) Direct officers and employees of the Immigration and Naturalization Service, assigned to accompany commercial aircraft, to perform the functions of a U.S.C. deputy marshal as a peace officer, in particular those set forth in 28 U.S.C. 570 and 18 U.S.C. 3053: (1) While aboard any aircraft to which they have been assigned, or (2) while within the general vicinity of such aircraft so long as it is within the jurisdiction of the United States. Such functions shall be in addition to those vested in such officers and employees pursuant to law.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 960-81, 46 FR 52348, Oct. 27, 1981]

§ 0.106 Certificates for expenses of unforeseen emergencies.

The Commissioner of Immigration and Naturalization is authorized to exercise the power and authority vested in the Attorney General by section 6 of the act of July 28, 1950, 64 Stat. 380 (8 U.S.C. 1555), to make certificates with respect to expenses of unforeseen emergencies of a confidential character: *Provided*, That each such certificate made by the Commissioner of Immigration and Naturalization shall be approved by the Attorney General.

§ 0.107 Representation on committee for visit-exchange.

The Commissioner of Immigration and Naturalization shall be a member of the committee which represents the Department of Justice in the development and implementation of plans for exchanging visits between the Iron Curtain countries and the United States and shall have authority to designate an alternate to serve on such committee.

§ 0.108 Redelegation of authority.

The authority conferred by § 0.105 upon the Commissioner of Immigration and Naturalization may be redelegated by him, to such extent as he may deem desirable, to any officer or employee of the Immigration and Naturalization Service as he may designate. Existing redelegations by the Commissioner shall continue in force and effect until modified or revoked.

§ 0.109 Implementation of the Treaty of Friendship and General Relations Between the United States and Spain.

The Commissioner of Immigration and Naturalization and immigration officers (as defined in 8 CFR 103.1(i)) are hereby designated as "competent national authorities" on the part of the United States within the meaning of Article XXIV of the Treaty of Friendship and General Relations Between the United States and Spain (33 Stat. 2105, 2117), and shall fulfill the obligations assumed by the United States pursuant to that Article in the manner and form prescribed.

(E.O. 11267; 3 CFR, 1966 Comp.)

§ 0.110 Implementation of the Convention Between the United States and Greece.

The Commissioner of Immigration and Naturalization and immigration officers (as defined in 8 CFR 103.1(i)) are hereby designated as "local authorities" and "competent officers' on the part of the United States within the meaning of Article XIII of the Convention Between the United States and Greece (33 Stat. 2122, 2131), and shall fulfill the obligations assumed by the United States pursuant to that Article in the manner and form prescribed.

(E.O. 11300, 3 CFR, 1966 Supp.)

Subpart T—United States Marshals Service

AUTHORITY: 28 U.S.C. 509, 510, 569; 5 U.S.C. 301, unless otherwise noted.

§ 0.111 General functions.

The Director of the United States Marshals Service shall direct and supervise all activities of the United States Marshals Service including:

(a) Execution of Federal arrest warrants pursuant to rule 4 of the Federal Rules of Criminal Procedure, Federal parole violator warrants pursuant to section 4206 of Title 18, United States Code, and Federal custodial and extradition warrants as directed.

(b) The service of all civil and criminal process emanating from the Federal judicial system including the execution of lawful writs and court orders pursuant to section 569(b), Title 28, United States Code.

(c) Provision for the health, safety, and welfare of Government witnesses and their families pursuant to sections 501-504 of Pub. L. 91-452 (18 U.S.C. prec. 3481).

(d) Administration and implementation of courtroom security requirements for the Federal judiciary.

(e) Protection of Federal jurists, court officers, and other threatened persons in the interests of justice where criminal intimidation impedes the functioning of the Federal judicial process.

(f) Provision of assistance in the protection of Federal property and buildings.

(g) Direction and supervision of a training school for United States Marshals Service personnel.

(h) Disbursement of appropriated funds to satisfy Government obligations incurred in the administration of justice pursuant to 28 U.S.C. 571.

(i) Maintenance of custody and control of money and property seized pursuant to 18 U.S.C. 1955(d), when seized property is turned over to the United States Marshals Service.

(j) Receipt, processing and transportation of prisoners held in the custody of a marshal or transported by the United States Marshals Service under cooperative or intergovernmental agreements.

(k) Sustention of custody of Federal prisoners from the time of their arrest by a marshal or their remand to a marshal by the court, until the prisoner is committed by order of the court to the custody of the Attorney General for the service of sentence, otherwise released from custody by the court, or returned to the custody of the United States Parole Commission or the Bureau of Prisons.

(l) Coordination and direction of the relationship of the offices of U.S. Marshals with the other organizational units of the Department of Justice.

(m) Approval of staffing requirements of the offices of U.S. Marshals.

(n) Investigation of alleged improper conduct on the part of U.S. Marshals Service personnel.

(o) Acquisition of adequate and suitable detention space, health care and other services and materials required to support prisoners under the custody of the United States Marshal who are not housed in Federal facilities.

(p) Approval of "other necessary expenditures in the line of duty" of U.S. Marshals and Deputy U.S. Marshals under 28 U.S.C. 567(3).

[Order No. 516-73, 38 FR 12917, May 17, 1973, as amended by Order No. 905-80, 45 FR 52145, Aug. 6, 1980; Order No. 960-81, 46 FR 52348, Oct. 27, 1981]

§ 0.112 Special deputation.

The Director, U.S. Marshals Service, is authorized to deputize selected officers or employees of the United States to perform the functions of a U.S. deputy marshal in any district designated by the Director, and to deputize whenever the needs of the U.S. Marshals Service so require selected State or local law enforcement officers to perform the functions in any district designated by the Director.

[Order No. 516-73, 38 FR 12917, May 17, 1973]

§ 0.113 Redelegation of authority.

The Director, U.S. Marshals Service, is authorized to redelegate to any of his subordinates any of the powers and functions vested in him by this subpart, except that the authority to approve "other necessary expenditures in the line of duty" of U.S. Marshals and Deputy U.S. Marshals may not be delegated below the Assistant Director level.

[Order No. 905-80, 45 FR 52145, Aug. 6, 1980]

Subpart U—Board of Immigration Appeals

§ 0.115 General functions.

The Board of Immigration Appeals shall review and determine:

(a) Appeals from decisions of special inquiry officers in exclusion and deportation cases.

(b) Appeals from decisions of district directors and special inquiry officers on applications for the exercise of the discretionary authority contained in the Immigration and Nationality Act (8 U.S.C. 1182(c)) and from decisions of district directors and officers in charge on applications for the advance exercise of the discretionary authority contained in 8 U.S.C. 1182(d)(3)).

(c) Appeals from decisions of district directors involving administrative fines and penalties, including mitigation thereof.

(d) Appeals from decisions of district directors on familial visa petitions filed in accordance with the Immigration and Nationality Act (8 U.S.C. 1154) and from decisions revoking the approval of such petitions in accordance with 8 U.S.C. 1155.

(e) Appeals from determinations of special inquiry officers or district directors relating to the bond, conditional parole or detention of an alien under 8 U.S.C. 1252.

(f) Appeals from decisions of special inquiry officers in rescission of adjustment of status cases under the Immigration and Nationality Act (8 U.S.C. 1256).

(g) Cases involving the decisions referred to in paragraphs (a) through (d) of this section which may be certified to the Board by the Commissioner, or any duly authorized officer of the Service, or which the Board may require to be certified to it.

(h) Cases in which the Board has rendered a decision which are reopened or reconsidered in accordance with 8 CFR 3.2.

(i) Recommendations of regional commissioners regarding the suspension or disbarment of attorneys or representatives from practice before the Service and the Board under 8 CFR 292.3.

(8 U.S.C. 1103)

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 960-81, 46 FR 52349, Oct. 27, 1981]

§ 0.116 Decisions subject to review by Attorney General.

The Board shall refer to the Attorney General for review of its decision all cases which:

(a) The Attorney General directs the Board to refer to him.

(b) The Chairman or a majority of the Board believes should be referred to the Attorney General for review.

(c) The Commissioner requests be referred to the Attorney General for review.

(d) Involve the suspension or disbarment, by the Board, of an attorney or representative, from practice before the Service and the Board.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 960-81, 46 FR 52349, Oct. 27, 1981]

§ 0.117 Finality of decision.

Except in those cases referred to the Attorney General in accordance with § 0.116, the decision of the Board shall be final. The Board may, however, return a case to the Immigration and Naturalization Service for such further action as may be appropriate therein, without entering a final decision on its merits.

§ 0.118 Delegation of authority.

Subject to any specific limitation prescribed by regulation, in considering and determining cases before it, the Board shall exercise such discretion and authority conferred upon the Attorney General by law as is appropriate and necessary for the disposition of the case.

Subpart V—United States Parole Commission

AUTHORITY: 28 U.S.C. 509 and 510; 5 U.S.C. 301; E.O. 11919, June 9, 1976; 18 U.S.C. 4201 et seq.

SOURCE: Order No. 663-76, 41 FR 35184, Aug. 20, 1976, unless otherwise noted.

CROSS REFERENCE: For regulations pertaining to the United States Parole Commission, see Parts 2 and 4 of this chapter.

§ 0.124 United States Parole Commission.

The United States Parole Commission is composed of nine Commissioners of whom one is designated Chairman. The Commission:

(a) Has authority, under 18 U.S.C. 4201 *et seq.*, to grant, modify, or revoke paroles of eligible U.S. prisoners serving sentences of more than 1 year, and is responsible for the supervision of parolees and prisoners mandatorily released prior to the expiration of their sentences, and for the determination of supervisory conditions and terms;

(b) Has responsibility in cases in which the committing court specifies that the Parole Commission shall determine the date of parole eligibility of the prisoner;

(c) Has responsibility for determining, in accordance with the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 504), whether the service as officials in the field of organized labor or in labor oriented management positions of persons convicted of certain crimes is contrary to the purposes of that act; and

(d) Has responsibility under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1111), for determining whether persons convicted of certain crimes may provide services to, or be employed by, employment benefit plans.

[Order No. 960-81, 46 FR 52349, Oct. 27, 1981]

§ 0.125 Chairman of U.S. Parole Commission.

The Chairman of the United States Parole Commission shall make any temporary assignment of a Commissioner to act as Vice Chairman, National Appeals Board member, or Regional Commissioner in the case of an absence or vacancy in the position, without the concurrence of the Attorney General.

§ 0.126 Administrative support.

The Department of Justice shall furnish administrative support to the Commission.

§ 0.127 Indigent prisoners.

The United States Parole Commission is authorized to exercise the authority vested in the Attorney General by section 3569 of Title 18, United States Code, to make a finding that a parolee is unable to pay a fine in whole or in part and to direct release of such parolee based on such finding.

Subpart V-1—Foreign Claims Settlement Commission

AUTHORITY: 22 U.S.C. 1622a; 22 U.S.C.1622 note; 50 U.S.C. app. 2001; 22 U.S.C. 1621-1645o; 50 U.S.C. app. 2001-2017p.

SOURCE: Order No. 960-81, 46 FR 52349, Oct. 27, 1981, unless otherwise noted.

§ 0.128 Organization.

The Foreign Claims Settlement Commission of the United States is a separate agency within the Department of Justice. It is composed of a full-time Chairman, and two part-time Commissioners. All functions, powers, and duties of the Commission not directly related to adjudicating claims are vested in the Chairman of the Commission, including the functions set forth in Section 3 of Reorganization Plan No. 1 of 1954 and the authority to issue rules and regulations. The Attorney General provides necessary administrative support and services to the Commission.

§ 0.128a General functions.

The Foreign Claims Settlement Commission has been authorized to determine claims of United States nationals for loss of property in specific foreign countries as a result of nationalization or other taking by the government of those countries by the International Claims Settlement Act of 1949, as amended, (22 U.S.C. 1621-

1645o); and to determine claims of United States nationals and organizations in territories of the United States for damage and loss of property as a result of military operations during World War II and claims of United States military personnel and civilian American citizens for having been held in a captured status in specified areas during World War II, the Korean conflict and the Vietnam conflict by the War Claims Act of 1948, as amended (50 U.S.C. app. 2001-2017p).

§ 0.128b Regulations.

All rules of practice and regulations applicable to the management of the affairs of and the adjudication of claims by the Foreign Claims Settlement Commission of the United States are published in 45 CFR Chapter V.

Subpart W—Additional Assignments of Functions and Designation of Officials to Perform the Duties of Certain Offices in Case of Vacancy, or Absence Therein or in Case of Inability or Disqualification to Act

§ 0.130 Functions common to heads of organizational units.

Subject to the general supervision and direction of the Attorney General, the head of each organizational unit within the Department shall:

(a) Direct and supervise the personnel, administration, and operation of the office, division, bureau, or board of which he is in charge.

(b) Under regulations prescribed by the Attorney General with the approval of the Director of the Office of Management and Budget, have authority to reallot funds allotted by the Assistant Attorney General for Administration and to redelegate to persons within his organizational unit authority and responsibility for the reallotment of such funds and control of obligations and expenditures within reallotments.

(c) Perform such special assignments as may from time to time be made to him by the Attorney General.

(d) Except as otherwise provided in this chapter, receive submittals and requests relative to the functions of his organizational unit.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 960-81, 46 FR 52349, Oct. 27, 1981]

§ 0.131 Designation of Acting United States Attorneys.

Each U.S. Attorney is authorized to designate any Assistant U.S. Attorney in his office to perform the functions and duties of the U.S. Attorney during his absence from office, or with respect to any matter from which he has recused himself, and to sign all necessary documents and papers, including indictments, as Acting U.S. Attorney while performing such functions and duties.

[Order No. 840-79, 44 FR 43468, July 25, 1979]

§ 0.132 Designating officials to perform the functions and duties of certain offices in case of absence, disability or vacancy.

(a) In case of vacancy in the office of Attorney General, or of his absence or disability, the Deputy Attorney General shall, pursuant to 28 U.S.C. 508(a) perform the functions and duties of and act as Attorney General. When by reason of absence, disability, or vacancy in office, neither the Attorney General nor the Deputy Attorney General is available to exercise the duties of the office of Attorney General, the Associate Attorney General shall, pursuant to 28 U.S.C. 508(b), perform the functions and duties of and act as Attorney General. In the event of vacancy, absence, or disability in each of these offices, the Solicitor General shall perform the functions and duties of and act as Attorney General.

(b) In the event of a vacancy in the office of Deputy Attorney General, an Associate Deputy Attorney General designated by the Attorney General shall perform the functions and duties of and act as Deputy Attorney General.

(c) In the event of a vacancy in the office of Associate Attorney General, a Deputy Associate Attorney General designated by the Attorney General shall perform the functions and duties of and act as Associate Attorney General.

(d) In the event of a vacancy in the office of head of any other organizational unit, the ranking deputy (or an equivalent official) in such unit who is available shall perform the functions and duties of and act as such head, unless the Attorney General shall direct otherwise. Except as otherwise provided by law, if there is no ranking deputy available, the Attorney General shall designate another official of the Department to perform the functions and duties of and act as such head.

(e) The head of each organizational unit of the Department is authorized, in case of absence from office or disability, to designate the ranking deputy (or an equivalent official) in the unit who is available to act as head. If there is no deputy available to act, any other official in such unit may be so designated.

[Order No. 755-77, 42 FR 59384, Nov. 17, 1977]

Subpart X—Authorizations With Respect to Personnel and Certain Administrative Matters

§ 0.137 Federal Bureau of Investigation.

Except as to persons in the positions of Associate Director, Assistant to the Director, Executive Assistant Director, and Assistant Director of the Federal Bureau of Investigation, the Director of the Federal Bureau of Investigation is authorized to exercise the power and authority vested in the Attorney General by law to take final action in matters pertaining to the employment, direction, and general administration (including appointment, assignment, training, promotion, demotion, compensation, leave, classification, and separation) of personnel, including personnel in wage board positions in the Federal Bureau of Investigation. All personnel actions taken under this section shall be subject to postaudit and correction by the Assistant Attorney General for Administration.

[Order No. 960-81, 46 FR 52350, Oct. 27, 1981]

§ 0.138 Bureau of Prisons, Federal Prison Industries, Immigration and Naturalization Service, Drug Enforcement Administration, United States Marshals Service, Executive Office for U.S. Attorneys.

The Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Administrator of the Drug Enforcement Administration, the Director of the U.S. Marshals Service, and the Director of the Executive Office for U.S. Attorneys are, as to their respective jurisdictions, authorized to exercise the power and authority vested in the Attorney General by law to take final action in matters pertaining to the employment, direction, and general administration (including appointment, assignment, training, promotion, demotion, compensation, leave, classification, and separation) of personnel in General Schedule grades GS-1 through GS-15 and in wage board positions, but excluding therefrom all attorney and U.S. Marshal positions. Such officials are, as to their respective jurisdictions, authorized to exercise the power and authority vested in the Attorney General by law to employ on a temporary basis experts or consultants or organizations thereof, including stenographic reporting services (5 U.S.C. 3109(b)). All personnel actions taken under this section shall be subject to postaudit and correction by the Assistant Attorney General for Administration.

[Order No. 893-80, 45 FR 34268, May 22, 1980, as amended by Order No. 960-81, 46 FR 52350, Oct. 27, 1981]

§ 0.139 Procurement matters.

The following shall control as to procurement matters:

(a) The Assistant Attorney General for Administration is authorized to exercise the authority vested in the Attorney General by law with respect to contractual actions executed on behalf of the Offices, Boards and Divisions. In accordance with the limitations specified in 41 CFR 28-1.404-51 respecting redelegation of contracting authority, the Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, Inc., the Commissioner of the Immigration and Naturalization Service, the Administrator of the Drug Enforcement Administration, the Director of the Office of Justice Assistance, Research and Statistics, and the Director of the United States Marshals Service are, as to their respective jurisdictions, authorized to exercise the authority vested in the Attorney General by law with respect to procurement matters. The Department of Justice Contract Review Committee will review contracts, prior to award, as specified in paragraph (b) of this section, except that contracts of the Federal Bureau of Investigation shall be reviewed within that Bureau.

(b) The Department of Justice Contract Review Committee is established for the purpose of providing a review of proposed contract awards to ensure compliance with procurement statutes, established regulations, and Department of Justice procurement policies and procedures. Contract review shall be limited to:

(1) Noncompetitive sole-source contracts and modifications or amendments to contracts, including such contracts pertaining to automatic data processing equipment, supplies, services or maintenance, which exceed $50,000.

(2) Formal contracts, regardless of contract type, exceeding $100,000 and contract modifications or amendments to existing formal contracts which cause the total contract costs to exceed $100,000.

(3) Other unusual or difficult contracts that are of a potentially controversial nature as identified by either the procurement office supporting the organizational component or the Contract Review Committee based on information which has come to the Committee's attention.

(c) The Assistant Attorney General for Administration is authorized to postaudit any procurement transactions throughout the Department and direct that corrective actions be taken wherever deemed necessary, and to inspect at any *time the procurement operations* of the Federal Bureau of Investigation, Bureau of Prisons, Federal Prison Industries, Inc., Immigration and Naturalization Service, Drug Enforcement Administration, United States Marshals Service and Office of Justice Assistance, Research and Statistics.

[Order No. 946-81, 46 FR 29932, June 4, 1981, as amended by Order No. 960-81, 46 FR 52350, Oct. 27, 1981]

§ 0.140 Authority relating to advertisements, and purchase of certain supplies and services.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Administrator of the Drug Enforcement Administration, the Director of the Office of Justice Research and Statistics and the Director of the United States Marshals Service as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department (including U.S. Attorneys), are authorized to exercise the power and authority vested in the Attorney General by law to take final action in the following-described matters:

(a) Authorizing the publication of advertisements, notices, or proposals under (44 U.S.C. 3702).

(b) Making determinations as to the acquisition of articles, materials, or supplies in accordance with sections 2 and 3 of the Buy American Act (47 Stat. 1520; 41 U.S.C. 10a, 10b).

(c) Placing orders with other agencies of the Government for materials or services, and accepting orders therefor, in accordance with section 686 of Title 31 of the United States Code.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 516-73, 38 FR 12918, May 17, 1973; Order No. 520-73, 38 FR 18380, July 10, 1973; Order No. 960-81, 46 FR 52350, Oct. 27, 1981]

§ 0.141 Audit and ledger accounts.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner *of Immigration* and Naturalization, the Administrator of the Drug Enforcement Administration, and the Director of the Office of Justice Assistance, Research and Statistics are, as to their respective jurisdictions, authorized to audit vouchers and to maintain general ledger accounts with respect to appropriations allotted to them.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 520-73, 38 FR 18380, July 10, 1973; Order No. 960-81, 46 FR 52350, Oct. 27, 1981]

§ 0.142 Per diem and travel allowances.

The Director of the Federal Bureau of Investigation, Director of the Bureau of Prisons, Commissioner of Federal Prison Industries, Inc., Commissioner of Immigration and Naturalization, Administrator of the Drug Enforcement Administration, Director of the United States Marshals Service, and Director of the Office of Justice Assistance, Research and Statistics, as to their respective jursidictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department (including United States Attorneys), except as provided in paragraph (f) of this section, are authorized to exercise the authority of the Attorney General to take final action in the following matters:

(a) Authorizing travel, subsistence, and mileage allowances under sections 5702-5707 of Title 5 of the United States Code in accordance with regulations prescribed by the Administrator of General Services and the Assistant Attorney General for Administration.

(b) Fixing rates in accordance with sections 5702-5704 and 5707 of Title 5, United States Code, and regulations prescribed by the Administrator of General Services and the Assistant Attorney General for Administration.

(c) Authorizing travel advances pursuant to 5 U.S.C. 5705 in accordance with the regulations prescribed by the Administrator of General Services and the Assistant Attorney General for Administration.

(d) Authorizing travel and transportation expenses, and, when applicable, relocation expenses for transferred employees, new appointees and student trainees, in accordance with 5 U.S.C. 5721-5733 and regulations prescribed by the Administrator of General Services and the Assistant Attorney General for Administration.

(e) Authorizing or approving, for purposes of security, the use of compartments or other transportation accommodations superior to lowest first-class accommodations under applicable travel regulations subject to 5 U.S.C. 5731.

(f) The heads of Offices, Boards and Divisions, in addition to the Bureaus, have the authority to approve the use of cash in excess of $100 in lieu of Government Transportation Requests in emergency circumstances, in accordance with regulations prescribed by the Administrator of the General Services Administration.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 520-73, 38 FR 18380, July 10, 1973; Order No. 565-74, 39 FR 15877, May 6, 1974; Order No. 787-78, 43 FR 22969, May 30, 1978; Order No. 800-78, 43 FR 43297, Sept. 25, 1978; Order No. 864-79, 44 FR 69927, Dec. 5, 1979; Order No. 960-81, 46 FR 52350, Oct. 27, 1981]

§ 0.143 Incentive Awards Plan.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Administrator of the Drug Enforcement Administration, the Director of the Office of Justice Assistance, Research and Statistics, the Director of the Executive Office for U.S. Attorneys, and the Director of the U.S. Marshals Service, as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department are authorized to exercise the power and authority vested in the Attorney General by law with respect to the administration of the Incentive Awards Plan and to approve honorary awards and cash awards under such plan not in excess of $5,000.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 516-73, 38 FR 12918, May 17, 1973; Order No. 520-73, 38 FR 18380, July 10, 1973; Order No. 772-78, 43 FR 14009, Apr. 4, 1978; Order No. 960-81, 46 FR 52350, Oct. 27, 1981]

§ 0.144 Determination of basic workweek.

The Director of the Federal Bureau of Investigation, Director of the Bureau of Prisons, Commissioner of Federal Prison Industries, Inc., Commissioner of the Immigration and Naturalization Service, Administrator of the Drug Enforcement Administration, Director of the Office of Justice Assistance, Research and Statistics, Director of the Executive Office for United States Attorneys and Director of the United States Marshals Service, as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department, are authorized to exercise the authority vested in the Attorney General by 5 U.S.C. 6101(a), to determine that the organizational unit concerned would be seriously handicapped in carrying out its functions or that costs would be substantially increased except upon modification of the basic workweek, and when such determination is made to fix the basic workweek of officers and employees of the unit concerned.

[Order No. 960-81, 46 FR 52350, Oct. 27, 1981]

§ 0.145 Overtime pay.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Administrator of the Drug Enforcement Administration, the Director of the Office of Justice Assistance, Research and Statistics and the Director of the U.S. Marshals Service as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department (including U.S. Attorneys), may, subject to any regulations which the Attorney General may prescribe, authorize overtime pay (including additional compensation in lieu of overtime of not less than 10 percent nor more than 25 percent pursuant to section 5545(c)(2) of Title 5, United States Code) for such positions as may be designated by them.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 516-73, 38 FR 12918, May 17, 1973; Order No. 520-73, 38 FR 18380, July 10, 1973; Order No. 960-81, 46 FR 52350, Oct. 27, 1981]

§ 0.146 Seals.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Chairman of the Board of Parole, the Administrator of the Drug Enforcement Administration, the Director of the Office of Justice Assistance, Research and Statistics, and the Director of the U.S. Marshals Service shall each have custody of the seal pertaining to his respective jurisdiction and he, or such person or persons as he may designate, may execute under seal any certification required to authenticate any books, records, papers, or other documents as true copies of official records of their respective jurisdictions. The Assistant Attorney General for Administration shall have custody of the seal of the Department of Justice, and he, or such person or persons as he may designate, may execute under seal any certification required to authenticate any books, records, papers, or other documents as true copies of official records of the Department of Justice. He may also prescribe regulations governing the use of the seal of the Department and various organizational units.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 516-73, 38 FR 12918, May 17, 1973; Order No. 520-73, 38 FR 18380, July 10, 1973; Order No. 960-81, 46 FR 52350, Oct. 27, 1981]

§ 0.147 Certification of obligations.

The following designated officials are authorized to make the certifications required by 31 U.S.C. 200(c): For the Federal Bureau of Investigation, the Assistant Director, Administrative Services Division; for the Bureau of Prisons, the Assistant Director for Planning and Development; for Federal Prison Industries, Inc., the Secretary; for the Immigration and Naturalization Service, the Comptroller; for the Drug Enforcement Administration, the Director of the Office of Administration and Management; for the Office of Justice Assistance, Research and Statistics, the Comptroller; and for all other organizational units of the Department (including United States Attorneys and United States Marshals), the Deputy Assistant Attorney General, Office of the Controller, Justice Management Division.

(31 U.S.C. 200(c))

[Order No. 972-82, 47 FR 9823, Mar. 8, 1982]

§ 0.148 Certifying officers

The following named officials are authorized to designate employees to certify vouchers (31 U.S.C. 82b); for the Federal Bureau of Investigation, the Director; for the Bureau of Prisons, the Director and the Associate Commissioner, Federal Prison Industries, Inc.; for the Federal Prison Industries, Inc., the Associate Commissioner and the Director, Bureau of Prisons; for the Immigration and Naturalization Service, the Commissioner; for the Drug Enforcement Administration, the Administrator; for the Office of Justice Assistance, Research and Statistics, the Director; for the United States Marshals Service, the Director; and for all other organizational units of the Department (including United States Attorneys), the Assistant Attorney General for Administration.

[Order No. 960-81, 46 FR 52351, Oct. 27, 1981]

§ 0.149 Disbursing employees.

The Director of the Fedeal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of the Federal Prison Industries, Inc., the Commissioner of the Immigration and Naturalization Service, the Administrator of the Drug Enforcement Administration, the Director of the United States Marshals Service, and the Director of the Office of Justice Assistance, Research and Statistics, as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other orgnizational units of the Department (including United States Attorneys), are authorized to request Treasury Department designation of disbursing employees (including cashiers). Existing authorizations to request designations shall remain in effect until terminated by the official who by this section would be authorized to request such designations.

[Order No. 960-81, 46 FR 52351, Oct. 27, 1981]

§ 0.150 Collection of erroneous payments.

The Director of the Federal Bureau of Investigation for the FBI and the Assistant Attorney General for Administration for all other organizational units of the Department are authorized, in accordance with the regulations prescribed by the Attorney General under Section 5514(b) of Title 5, United States Code, to collect indebtedness resulting from erroneous payments to employees.

[Order No. 634-75, 40 FR 58644, Dec. 18, 1975]

§ 0.151 Administering Oath of Office.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Administrator of the Drug Enforcement Administration, the Director of the Office of Justice Assistance, Research and Statistics, the Director of the Executive Office for U.S. Attorneys, and the Director of the U.S. Marshals Service, as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department are authorized to designate, in writing, pursuant to the provisions of sections 2903(b) and 2904 of Title 5, United States Code, officers or employees to administer the oath of office required by section 3331 of Title 5, United States Code, and to administer any other oath required by law in connection with employment in the executive branch of the Federal Government.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 516-73, 38 FR 12918, May 17, 1973; Order No. 520-73, 38 FR 18380, July 10, 1973; Order No. 772-78, 43 FR 14009, Apr. 4, 1978; Order No. 960-81, 46 FR 52351, Oct. 27, 1981]

§ 0.152 Approval of funds for attendance at meetings.

The Director of the Federal Bureau of Investigation, the Director of the

Bureau of Prisons, the Commissioner of Immigration and Naturalization, the Administrator of the Drug Enforcement Administration and the Director of the Office of Justice Assistance, Research and Statistics, as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department (including U.S. Attorneys and Marshals), are authorized to exercise the power and authority vested in the Attorney General by law to prescribe regulations for the expenditure of appropriated funds available for expenses of attendance at meetings of organizations.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 520-73, 38 FR 18380, July 10, 1973; Order No. 960-81, 46 FR 52351, Oct. 27, 1981]

§ 0.153 Selection and assignment of employees for training.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, Inc., the Commissioner of the Immigration and Naturalization Service, the Administrator of the Drug Enforcement Administration, the Director of the Office of Justice Assistance, Research and Statistics, the Director of the Executive Office for United States Attorneys and the Director of the United States Marshals Service, as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department, are hereby authorized to exercise the authority vested in the Attorney General by 5 U.S.C 4109, with respect to the selection and assignment of employees for training by, in, or through Government facilities and the payment or reimbursement of expenses for such training.

[Order No. 960-81, 46 FR 52351, Oct. 27, 1981]

§ 0.154 Advance and evacuation payments and special allowances.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Administrator of the Drug Enforcement Administration, the Director of the United States Marshals Service, and the Director of the Office of Justice Assistance, Research and Statistics, as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department (including U.S. Attorneys), are hereby authorized to exercise the authority vested in the Attorney General by sections 5522-5527 of Title 5, United States Code, and Executive Order No. 10982 of December 25, 1961, and to administer the regulations adopted by the Attorney General in Order No. 269-62 with respect to advance and evacuation payments and special allowances.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 520-73, 38 FR 18380, July 10, 1973; Order No. 565-74, 39 FR 15877, May 6, 1974; Order No. 960-81, 46 FR 52351, Oct. 27, 1981]

§ 0.155 Waiver of claims for erroneous payments of pay and allowances.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Administrator of the Drug Enforcement Administration, and the Director of the Office of Justice Assistance, Research and Statistics, as to their respective jurisdictions, and the Assistant Attorney General for Administration as to all other organizational units of the Department (including U.S. Attorneys and Marshals) are authorized to exercise the authority under 5 U.S.C. 5584, as amended by Pub. L. 92-453, for the waiver of claims of the United States for erroneous payments of pay and allowances to employees of the Department of Justice in accordance with the standards prescribed by the Comptroller General in 4 CFR Parts 91-93.

[Order No. 514-73, 38 FR 12110, May 17, 1973, as amended by Order No. 520-73, 38 FR 18380, July 10, 1973; Order No. 960-81, 46 FR 52351, Oct. 27, 1981]

§ 0.156 Execution of U.S. Marshals' deeds or transfers of title.

A chief deputy or deputy U.S. Marshal who sells property—real, personal, or mixed—on behalf of a U.S. Marshal, may execute a deed or transfer of title to the purchaser on behalf of and in the name of the U.S. Marshal.

§§ 0.157-0.158 [Reserved]

§ 0.159 Redelegation of authority.

Except as to the authority delegated by § 0.147, the authority conferred by this Subpart X upon heads of organizational units may be redelegated by them, respectively, to any of their subordinates. Existing delegations of authority to officers and employees and to U.S. Attorneys, not inconsistent with this Subpart X, made by any officer named in this section or by the Assistant Attorney General for Administration, shall continue in force and effect until modified or revoked.

[Order No. 543-73, 38 FR 29587, Oct. 26, 1973]

Subpart Y—Authority to Compromise and Close Civil Claims and Responsibility for Judgments, Fines, Penalties, and Forfeitures

§ 0.160 Offers which may be accepted by Assistant Attorneys General.

(a) Subject to the limitations set forth in paragraph (c) of this section the Assistant Attorneys General of the litigating divisions are authorized, with respect to matters assigned to their divisions, to:

(1) Accept offers in compromise of claims on behalf of the United States in all cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed $750,000 or 10 percent of the original claim, whichever is greater.

(2) Accept offers in compromise of, or settle administratively, claims against the United States in all cases where the principal amount of the proposed settlement does not exceed $750,000;

(3) Accept offers to compromise all nonmonetary cases.

(b) Subject to the limitations set forth in paragraph (c) of this section, the Assistant Attorney General, Tax Division, is authorized to accept offers in compromise of, or settle administratively, claims against the United States, regardless of the amount of the proposed settlement, in any case where the Joint Committee on Taxation has indicated it has no adverse criticism of the settlement.

(c) Any settlement, regardless of the amount or circumstances, should be referred to the Deputy Attorney General:

(1) When for any reason, the compromise of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totalling more than the $750,000 designated in the preceding part of this section.

(2) When the Assistant Attorney General is of the opinion that because of a question of law or policy presented, or because of opposition to the proposed settlement by the agency or agencies involved, or for any other reason, the offer should receive the personal attention of the Deputy Attorney General.

[Order No. 960-81, 46 FR 52351, Oct. 27, 1981]

§ 0.161 Acceptance of certain offers by the Deputy Attorney General.

(a) In all cases in which the amount of the offer in proposed settlement exceeds the applicable amount specified in § 0.160, and in any case falling within any of the exceptions enumerated in § 0.160(c), the Assistant Attorney General concerned shall, if in his opinion the offer of compromise, or administrative action to settle, should be accepted, transmit his recommendation to that effect to the Deputy Attorney General.

(b) The Deputy Attorney General is authorized to exercise the settlement authority of the Attorney General as to all claims on behalf of, and all claims against, the United States.

[Order No. 960-81, 46 FR 52351, Oct. 27, 1981]

§ 0.162 Offers which may be rejected by Assistant Attorneys General.

Each Assistant Attorney General is authorized, with respect to matters assigned to his division or office, to reject offers in compromise of any claims in behalf of the United States, or, in compromises or administrative actions to settle, against the United States, except in those cases which come under § 0.160(c)(2).

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 960-81, 46 FR 52352, Oct. 27, 1981]

§ 0.163 Approval by Solicitor General of action on compromise offers in certain cases.

In any Supreme Court case the acceptance, recommendation of acceptance, or rejection, under §§ 0.160, 0.161, or 0.162, of a compromise offer by the Assistant Attorney General concerned, shall have the approval of the Solicitor General. In any case in which the Solicitor General has authorized an appeal to any other court, a compromise offer, or any other action, which would terminate the appeal, shall be accepted or acted upon by the Assistant Attorney General concerned only upon advice from the Solicitor General that the principles of law involved do not require appellate review in that case.

§ 0.164 Civil claims which may be closed by Assistant Attorney Generals.

Each Assistant Attorney General is authorized, with respect to matters assigned to his division or office, to close (other than by compromise or by entry of judgment) civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed $750,000, except:

(a) When for any reason, the closing of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims the total gross amounts of which exceed $750,000.

(b) When the Assistant Attorney General concerned is of the opinion that because of a question of law or policy presented, or because of opposition to the proposed closing by the agency or agencies involved, or for any other reason, the proposed closing should receive the personal attention of the Deputy Attorney General or the Attorney General.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 543-73, 38 FR 29587, Oct. 26, 1973; Order No. 699-77, 42 FR 15315, Mar. 22, 1977; Order No. 960-81, 46 FR 52352, Oct. 27, 1981]

§ 0.165 Recommendations to Associate Attorney General that certain claims be closed.

In case the gross amount of the original claim asserted by the Government exceeds $750,000, or one of the exceptions enumerated in § 0.164 is involved, the Assistant Attorney General concerned shall, if in his opinion the claim should be closed, transmit his recommendation to that effect, together with a report on the matter, to the Deputy Attorney General for review and final action. Such report shall be in such form as the Deputy Attorney General may require.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 543-73, 38 FR 29587, Oct. 26, 1973; Order No. 699-77, 42 FR 15315, Mar. 22, 1977; Order No. 960-81, 46 FR 52352, Oct. 27, 1981]

§ 0.166 Memorandum pertaining to closed claim.

In each case in which a claim is closed under § 0.164 the Assistant Attorney General concerned shall execute and place in the file pertaining to the claim a memorandum which shall contain a description of the claim and a full statement of the reasons for closing it.

§ 0.167 Submission to Associate Attorney General by Director of Office of Alien Property of certain proposed allowances and disallowances.

In addition to the matters which he is required to submit to the Associate Attorney General under preceding sections of this Subpart Y, the Director of the Office of Alien Property, shall submit to the Associate Attorney General for such review as he may desire to make the following:

(a) Any proposed allowance by the Director, without hearing, of a title or debt claim.

(b) Any final determination of a title of debt claim, whether by allowance or disallowance.

(c) Any proposed allowance or disallowance by the Director, without hearing, of a title claim under section 9(a) of the Trading with the Enemy Act, as amended, filed less than 2 years after the date of vesting in or transfer to the Alien Property Custodian or the Attorney General of the property or interest in respect of which the claim is made:

Provided, That any such title or debt claim is within one of the following-described categories.

(1) Any title claim which involves the return of assets having a value of $50,000 or more, or any debt claim in the amount of $50,000 or more.

(2) Any title claim which will, as a practical matter, control the disposition of related title claims involving, with the principal claim, assets having a value of $50,000 or more; or any debt claim which will, as a practical matter, control the disposition of related debt claims in the aggregate amount, including the principal claim, of $50,000 or more.

(3) Any title claim or debt claim presenting a novel question of law or a question of policy which, in the opinion of the Director, should receive the personal attention of the Associate Attorney General or the Attorney General.

(d) Any sale or other disposition of vested property involving assets of $50,000 or more.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 543-73, 38 FR 29587, Oct. 26, 1973; Order No. 568-74, 39 FR 18646, May 29, 1974; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 960-81, 46 FR 52352, Oct. 27, 1981]

§ 0.168 Redelegation by Assistant Attorneys General.

(a) The Assistant Attorneys General are authorized to redelegate to subordinate division officials and U.S. Attorneys any of the authority delegated by §§ 0.160, 0.162, 0.164, and 0.172, except that when a disagreement between a U.S. Attorney or other Department attorney and a client agency over the terms of a proposed settlement cannot be resolved below the Assistant Attorney General level, the settlement must be presented to the appropriate Assistant Attorney General for approval.

(b) Redelegations under this section shall be in writing and shall be approved by the Deputy Attorney General before becoming effective.

(c) Existing delegations and redelegations of authority to such officials and U.S. Attorneys to compromise or close claims shall continue in force and effect until modified or revoked by the Assistant Attorney General in charge of the Division concerned.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 543-73, 38 FR 29587, Oct. 26, 1973; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 781-78, 43 FR 20793, May 15, 1978; Order No. 960-81, 46 FR 52352, Oct. 27, 1981]

§ 0.169 Definition of "gross amount of original claim."

The phrase "gross amount of the original claim", as used in this Subpart Y and as applied to any civil fraud claim described in § 0.45(d), shall mean the amount of single damages involved.

§ 0.170 Interest on monetary limits.

In computing the gross amount of the original claim and the amount of the proposed settlement pursuant to this Subpart Y, accrued interest shall be excluded.

§ 0.171 Judgments, fines, penalties, and forfeitures.

(a) Each Assistant Attorney General shall be responsible for conducting, handling, or supervising such litigation or other actions as may be appropriate to accomplish the satisfaction, collection, or recovery, as the case may be, or judgments, fines, penalties, and forfeitures (including bailbond forfeitures) arising in connection with cases under his jurisdiction. In order to assure the efficient and effective performance of the functions described in the first sentence of this paragraph, each Assistant Attorney General shall designate an individual or unit in his division to be responsible for the performance of those functions.

(b) Each U.S. Attorney shall designate an Assistant U.S. Attorney, and such other employees as may be necessary, or shall establish an appropriate unit within his office, to be responsible for activities related to the satisfaction, collection, or recovery, as the case may be, of judgments, fines, penalties, and forfeitures (including bail-bond forfeitures).

(c) The Director of the Bureau of Prisons shall take such steps as may be necessary to assure that the appropriate U.S. Attorney is notified whenever a prisoner is released prior to the payment of his fine.

(d) The Pardon Attorney shall notify the appropriate U.S. Attorney whenever the President issues a pardon and whenever the President remits or commutes a fine.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 960-81, 46 FR 52352, Oct. 27, 1981]

§ 0.172 Authority: Federal tort claims.

(a) The Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Director of the United States Marshals Service and the Administrator of the Drug Enforcement Administration shall have authority to adjust, determine, compromise, and settle a claim involving the Bureau of Prisons, Federal Prison Industries, the Immigration and Naturalization Service, the United States Marshals Service and the Drug Enforcement Administration, respectively, under section 2672 of Title 28, United States Code, relating to the administrative settlement of Federal tort claims, if the amount of a proposed adjustment, compromise, settlement or award does not exceed $2,500. When in the opinion of one of the said Directors or one of the said Commissioners such a claim pending before him presents a novel question of law or a question of policy, he shall obtain the advice of the Assistant Attorney General in charge of the Civil Division.

(b) Subject to the provisions of § 0.160, the assistant Attorney General in charge of the Civil Division shall have authority to adjust, determine, compromise, and settle any other claim involving the Department under section 2672 of Title 28, United States Code, relating to the administrative settlement of Federal tort claims.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 520-73, 38 FR 18381, July 10, 1973; Order No. 565-74, 39 FR 15877, May 6, 1974]

Appendix to Subpart Y

Redelegations of Authority To Compromise and Close Civil Claims

Civil Division

[Memo No. 374]

Note: Civil Division, Memorandum No. 374 was superseded by Civil Division, Directive No. 110-78 appearing at 43 FR 38820, Aug. 31, 1978.

[Directive No. 18-71]

Note: Civil Division, Directive No. 18-71 was superseded by Civil Division, Directive No. 110-78, appearing at 43 FR 38820, Aug. 31, 1978.

[Directive No. 31-72]

Note: Civil Division, Directive No. 31-72 was superseded by Civil Division, Directive No. 110-78, appearing at 43 FR 38820, Aug. 31, 1978.

[Directive No. 110-78]

Note: Civil Division, Directive No. 110-78 was superseded by Civil Division, Directive No. 145-81, appearing at 46 FR 52353, Oct. 27, 1981.

[Directive No. 145-81]

Redelegation of Authority of Branch Directors, Heads of Offices and United States Attorneys in Civil Division Cases

Section 1. Authority to compromise or close cases.

(a) Delegation to Deputy Assistant Attorneys General. The Deputy Assistant Attorneys General are authorized to act for, and to exercise the authority of, the Assistant Attorney General in charge of the Civil Division with respect to the institution of suits, the acceptance or rejection of compromise offers, and the closing of claims or cases, unless any such authority is required by law to be exercised by the Assistant Attorney General personally or has been specifically delegated to another Department official.

(b) Delegation to Branch Directors, the Director of the Appellate Staff, the Chief of the Judgment Enforcement Unit and the Director of the Office of Foreign Litigation. Subject to the limitations imposed by paragraph (d) of this section, Branch Directors, the Director of the Apellate Staff, the Chief of the Judgment Enforcement Unit and the Director of the Office of Foreign Litigation are hereby authorized, with respect to matters assigned to their respective components, to reject any offer in compromise and to accept offers in compromise and close claims or cases in the manner and to the same extent as Deputy Assistant Attorneys General, except that Branch Directors, the Director of the Appellate Staff, the Chief of the Judgment Enforcement Unit and the Director of the Office of Foreign Litigation cannot accept or reject any offers in compromise of, or settle administratively any claim or case against the United States where the principal amount to be paid by the United States exceeds $150,000. Nor can these Civil Division officials close (other than by compromise or by entry of judgment), any claim or case on behalf of the United States where the gross amount involved exceeds $150,000, or accept or reject any offers in compromise of any such claim or case in which the difference between the gross amount of the original claim and the proposed settlement exceeds $150,000 or 10 percent of the original claim, whichever is greater. Branch Directors, the Chief of the Judgment Enforcement Unit and the Director of the Office of Foreign Litigation are further authorized to file suits, counterclaims, and cross-claims, or to take any other action necessary to protect the interests of the United States in all nonmonetary cases, in all routine loan collection and foreclosure cases, and in other monetary claims or cases where the gross amount of the claim does not exceed $150,000.

(c) Delegation to U.S. Attorneys and Attorneys-in-Charge of Field Offices. Subject to the limitations imposed by paragraph (d) of this section, and the authority of the Solicitor General set forth in 28 CFR 0.163, United States Attorneys and Attorneys-in-Charge of field offices are authorized to:

(1) Reject any offer to settle a monetary claim on behalf of the United States where the amount offered is below $100,000 or below an amount previously indicated by the appropriate Civil Division official to be an acceptable minimum, in any case for which they have primary responsibility.

(2) Accept or reject offers to compromise cases and close claims which have been directly referred or delegated to them by the Civil Division, as set forth in sections 4 (a) and (b) of this directive, in the same manner and to the same extent as Branch Directors, except that United States Attorneys and Attorneys-in-Charge of field offices cannot accept or reject any offers in compromise of any claim or case against the United States where the principal amount of the proposed settlement exceeds $100,000. Nor can United States Attorneys or Attorneys-in Charge of field offices close (other than by compromise or by entry of judgment), any claim or case on behalf of the United States where the gross amount involved exceeds $100,000, or accept or reject any offers in compromise of any such claim or case in which the difference between the gross amount of the original claim and the proposed settlement exceeds $100,000 or 10 percent of the original claim, whichever is greater. United States Attorneys may redelegate this authority to Assistant United States Attorneys who supervise other Assistant United States Attorneys who handle civil litigation.

(d) Limitations on delegations. The authority to compromise cases, file suits, counterclaims, and cross-claims, or take any other action necessary to protect the interests of the United States, delegated by paragraphs (a), (b) and (c) of this section, may not be exercised, and the matter shall be submitted for resolution to the Assistant Attorney General, Civil Division, when:

(1) For any reason, the proposed action, as a practical matter, will control or adversely influence the disposition of other claims totalling more than the respective amounts designated in the above paragraphs.

(2) Because a novel question of law or a question of policy is presented, or for any other reason, the proposed action should, in the opinion of the officer or employee concerned, receive the personal attention of the Assistant Attorney General, Civil Division.

(3) The agency or agencies involved are opposed to the proposed action. (The views of an agency must be solicited with respect to any significant proposed action if it is a party, if it has asked to be consulted with respect to any such proposed action, or if such proposed action in a case would adversely affect any of its policies.)

(4) The U.S. Attorney involved is opposed to the proposed action and requests that the decision be submitted to the Assistant Attorney General for reconsideration.

Section 2. Action Memoranda.

(a) Whenever a United States Attorney compromises a case or closes a claim pursuant to the authority delegated by this Directive, a memorandum fully explaining the basis for the action taken shall be executed and placed in the file. A copy of the memorandum must be sent to the appropriate branch of the Civil Division.

(b) The compromising of cases or closing of claims which a United States Attorney is

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not authorized to approve shall be referred to the Civil Division official having the requisite approval authority. The referral memorandum shall contain a detailed description of the matter, the United States Attorney's recommendation, and a full statement of the reasons therefor.

(c) Whenever an official of the Civil Division accepts or rejects a compromise or closes a claim pursuant to the authority delegated by this Directive, a memorandum containing a detailed statement of the matter and a full statement of the reasons for the action taken shall be placed in the file.

Section 3. Return of civil judgment cases to agencies. Claims arising out of judgments in favor of the United States which cannot be permanently closed as uncollectible may be returned to the referring Federal agency for servicing and surveillance whenever all conditions set forth in USAM 4-2.230 have been met.

Section 4. Authority for direct reference and delegation of Civil Division cases to United States Attorneys.

(a) Direct reference to United States Attorneys by agencies. The following civil actions under the jurisdiction of the Assistant Attorney General, Civil Division, may be referred by the agency concerned directly to the United States Attorney for handling in trial courts and United States Attorneys are hereby delegated the authority to take all necessary steps to protect the interests of the United States, without prior approval of the Assistant Attorney General, Civil Division, or his representatives. Agencies may, however, if special handling is desired, refer these cases to the Civil Division. Also, when constitutional questions or other significant issues arise in the course of such litigation, or when an appeal is taken by any party, the Civil Division should be consulted.

(1) Money claims by the United States (except penalties and forfeitures) where the gross amount of the original claim does not exceed $100,000.

(2) Single family dwelling house foreclosures arising out of loans made or insured by the Department of Housing and Urban Development, the Veterans Administration and the Farmers Home Administration.

(3) Suits to enjoin violations of, and to collect penalties under, the Agricultural Adjustment Act of 1938, 7 U.S.C. 1376, the Packers and Stockyards Act, 7 U.S.C. 203, 207(g), 213, 215, 216, 222, and 228a, the Perishable Agricultural Commodities Act, 1930, 7 U.S.C. 499c(a) and 499h(d), the Egg Products Inspection Act, 21 U.S.C. 1031 *et seq.*, the Potato Research and Promotion Act, 7 U.S.C. 2611 *et seq.*, the Cotton Research and Promotion Act of 1966, 7 U.S.C. 2101 *et seq.*, the Federal Meat Inspection Act, 21 U.S.C. 601 *et seq.*, and the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601 *et seq.*

(4) Suits by social security beneficiaries under the Social Security Act, 42 U.S.C. 402 *et seq.*

(5) Social security disability suits under 42 U.S.C. 423 *et seq.*

(6) Black lung beneficiary suits under the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 921 *et seq.*

(7) Suits by Medicare beneficiaries under 42 U.S.C. 1395ff.

(8) Garnishment actions authorized by 42 U.S.C. 659 for child support or alimony payments.

(9) Judicial review of actions of the Secretary of Agriculture under the food stamp program, pursuant to the provisions of 7 U.S.C. 2022 involving retail food stores.

(10) Cases referred by the Department of Labor for the collection of penalties or for injunctive action under the Fair Labor Standards Act of 1938 and the Occupational Safety and Health Act of 1970.

(11) Cases referred by the Department of Labor solely for the collection of civil penalties under the Farm Labor Contractor Registration Act of 1963, 7 U.S.C. 2048(b)

(12) Cases referred by the Interstate Commerce Commission to enforce orders of the Interstate Commerce Commission or to enjoin or suspend such orders pursuant to 28 U.S.C. 1336.

(13) Cases referred by the United States Postal Service for injunctive relief under the nonmailable matter laws, 39 U.S.C. 3001 *et seq.*

(b) Delegation to United States Attorneys. Branch and office directors and unit chiefs of the Civil Division may delegate to United States Attorneys any nonmonetary claims or suits, and monetary claims or suits involving amounts up to $150,000, where the circumstances warrant such delegations. Upon the recommendation of branch and office directors and unit chiefs, the Assistant Attorney General, Civil Division, may delegate to United States Attorneys any claims or suits involving amounts up to $750,000, where the circumstances warrant such delegations. All delegations pursuant to this subsection shall be in writing and no United States Attorney shall have authority to compromise or close any such delegated case or claim except as is specified in the required written delegation or in section 1(c) of this directive. The limitations of section 1(d) of this directive also remain applicable in any case or claim delegated hereunder.

(c) Cases not covered. Regardless of the amount in controversy, the following matters will normally not be referred to United States Attorneys for handling but will be retained and handled by the appropriate branch within the Civil Division:

(1) Civil Actions in the Court of Claims.

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(2) Cases within the jurisdiction of the commercial litigation branch involving patents, trademarks, copyrights, etc.

(3) Cases before the United States Court of International Trade and the Court of Customs and Patent Appeals.

(4) Any case involving bribery, conflict of interest, breach of fiduciary duty, breach of employment contract, or exploitation of public office; or any False Claims Act case where the amount of single damages, plus forfeitures, exceeds $100,000.

(5) Any case involving vessel-caused pollution in navigable waters.

(6) Cases on appeal, except as determined by the Director of the Appellate Staff.

(7) Any case involving litigation in a foreign court.

Section 5. Adverse decisions. All final judicial decisions adverse to the Government involving any direct reference or delegated case must be reported promptly to the Assistant Attorney General, Civil Division, attention Director, Appellate Staff. Consult Title 2 of the United States Attorneys' Manual for procedures and time limitations.

Section 6. This directive supersedes Civil Division Directive No. 110-78 regarding redelegation of the Assistant Attorney General's authority in Civil Division cases to branch directors, heads of offices, and United States Attorneys. This directive clarifies the intent set forth in Directive 110-78 which this directive supersedes.

[Order No. 960-81, 46 FR 52352, Oct. 27, 1981, as amended by Directive No. 151-92, 47 FR 21533, May 19, 1982]

CRIMINAL DIVISION

[Memo No. 375]

STANDARDS AND PROCEDURES WITH RESPECT TO CRIMINAL PROSECUTIONS INVOLVING CERTAIN AGRICULTURAL MARKETING QUOTA PENALTY CASES

By virtue of the authority vested in me by Part 0 of Title 28 of the Code of Federal Regulations, particularly §§ 0.55, 0.160, 0.162, 0.164, 0.166, and 0.168, it is hereby ordered as follows:

SECTION 1. *Purpose.* The purpose of this Memorandum is to prescribe standards and procedures for U.S. Attorneys with respect to the handling of the criminal aspects of agricultural marketing quota penalty cases which are submitted to the U.S. Attorneys by direct referral from the attorney in charge of the local office of the General Counsel of the Department of Agriculture (hereinafter in this Memorandum referred to as the General Counsel). Supplement No. 1 of October 26, 1955, to Memorandum No. 119 is hereby superseded. Attention is invited to the fact that Memorandum No. 374, of June 3, 1964, which superseded Memorandum No. 119 of December 8, 1954, deals with the civil aspects of agricultural marketing quota penalty cases.

SEC. 2. *Scope of authority.* (a) The authority conferred by this Memorandum is applicable to alleged criminal violations involving the provisions of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1311-1376), in cases in which the gross amount involved does not exceed $5,000.

(b) Matters involving alleged criminal violations of the Agricultural Adjustment Act of 1938, as amended, shall be referred directly to the U.S. Attorney concerned by the attorney in charge of the local office of the General Counsel which has jurisdiction over any such matter requiring action. U.S. Attorneys may initiate criminal prosecution or decline to do so as they, in their judgment, may deem appropriate. U.S. Attorneys are, of course, urged to obtain the advice and assistance of this Department whenever they feel that such advice and assistance might be helpful.

SEC. 3. *Correspondence*—(a) *With the Department of Justice.* Inquiries to the Department concerning any matters covered by this Memorandum should be directed to the attention of the Assistant Attorney General in charge of the Criminal Division (hereinafter in this Memorandum referred to as the Assistant Attorney General). Any such inquiry should be accompanied by copies of all pertinent correspondence and other documents, including the indictment if one shall have been returned, since files concerning these matters will not be maintained in Washington.

(b) *With the Department of Agriculture.* Correspondence calling for additional factual details, and requests for investigations, documents, witnesses, and similar matters, should be directed to the General Counsel's attorney in charge who originated the matter. However, only the U.S. Attorney and his duly appointed assistants are authorized to exercise any control whatsoever over the handling of any such matter referred to the U.S. Attorney for action. The U.S. Attorney is charged with the entire responsibility for the manner in which such matters are handled.

SEC. 4. *Closing of the Prosecution.* (a) U.S. Attorneys may decline to prosecute any case involving a matter covered by this Memorandum without prior consultation or approval of the Assistant Attorney General. If, however, prosecution has been initiated by way of indictment or information, the indictment or information shall not be dismissed until authority to do so has been obtained from the Assistant Attorney General or his representative unless the reason for the dismissal is one which does not necessitate the prior approval of the Criminal Divi-

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sion. (See U.S. Attorneys' Manual, Title 2: Criminal Division, pages 18-20.)

(b) In each instance in which a case is closed by a U.S. Attorney and in which prior approval of the Assistant Attorney General or his representative has not been obtained, a memorandum shall be prepared and placed in the file describing the action taken and the reasons therefor.

SEC. 5. *Appeals.* The instructions existing with reference to criminal appeals shall govern appeals in cases covered by this Memorandum.

[29 FR 7423, June 9, 1964]

[Directive No. 1]

NOTE: Criminal Division, Directive No. 1, was superseded by Criminal Division, Directive No. 2, appearing at 43 FR 50677, Oct. 31, 1978.

[Directive No. 2]

REDELEGATIONS OF AUTHORITY OF U.S. ATTORNEYS, DEPUTY ASSISTANT ATTORNEYS GENERAL, AND SECTION CHIEFS IN CRIMINAL CIVISION CASES

By virtue of the authority vested in me by Part 0 of Title 28 of the Code of Federal Regulations as amended, particularly §§ 0.160, 0.162, 0.164, and 0.168, it is hereby ordered that Criminal Division Directive No. 1 (29 FR 7383, June 6, 1964) is deleted and is superseded by the following:

(a) Each U.S. Attorney is authorized to accept or reject offers in compromise of claims in behalf of the United States in all cases in which the difference between the gross amount of the original claim (or the forfeiture value of the merchandise claimed) and the proposed settlement does not exceed $60,000, and of claims against the United States in all cases, or in administrative actions to settle, in which the amount of the proposed settlement does not exceed $60,000, and to close (other than by compromise or by entry of judgment) civil claims asserted by the United States in all cases in which the gross amount of the original claim or the forfeiture value of the merchandise claimed does not exceed $60,000 except:

(1) When, for any reason, the compromise or closing of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims which, when added to the claim in question, total more than the respective amounts designated above, or

(2) When the U.S. Attorney is of the opinion that because of a question of law or policy presented, or for any other reason, the matter should receive the personnel attention of the Assistant Attorney General.

(b) Notwithstanding the provisions of this Directive, the Assistant Attorney General of the Criminal Division may delegate to U.S. Attorneys authority to compromise or close other cases, including those involving amounts greater than as set forth in paragraph (a) of this directive, and up to the maximum limit of his authority, where the circumstances warrant such delegation.

(c) All other authority delegated to me by §§ 0.160, 0.162, and 0.164 of Title 28 of the Code of Federal Regulations not falling within the limitations of paragraph (a) of this directive is hereby redelegated to Section Chiefs in the Criminal Division, except that when a Section Chief is of the opinion that because of a question of law or policy presented, or for any other reason, the matter should receive the personal attention of a Deputy Assistant Attorney General or the Assistant Attorney General, he shall refer the matter to the appropriate Deputy Assistant Attorney General or to the Assistant Attorney General.

(d) Notwithstanding any of the above redelegations, when the agency or agencies involved have objected in writing to the proposed closing or dismissal of a case, or to the acceptance or rejection of an offer in compromise, and the matter cannot be resolved below the Assistant Attorney General level, it must be decided by the Assistant Attorney General.

[43 FR 50677, Oct. 31, 1978]

LAND AND NATURAL RESOURCES DIVISION

[Memo. No. 388]

NOTE: Land and Natural Resources Division, Memo No. 388, was superseded by Tax Division, Directive No. 7-76, appearing at 41 FR 53660, Dec. 8, 1976.

[Directive No. 4-72]

NOTE: Land and Natural Resources Division, Directive No. 4-72, was superseded by Tax Division Directive No. 7-76, appearing at 41 FR 53660, Dec. 8, 1976.

[Directive No. 5-72]

NOTE: Land and Natural Resources Division, Directive No. 5-72, was superseded by Tax Division, Directive No. 7-76, appearing at 41 FR 53660, Dec. 8, 1976.

[Directive No. 7-76]

REDELEGATION OF AUTHORITY TO INITIATE AND TO COMPROMISE LAND AND NATURAL RESOURCES DIVISION CASES

This directive supersedes Land and Natural Resources Memorandum No. 388 (appendix to Subpart Y) and Directives Nos. 4-72 and 5-72. By virtue of the authority vested in me by Part 0 of Title 28 of the Code of Federal Regulations, and particularly

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§§ 0.65, 0.160, 0.162, 0.164, 0.166, and 0.168 thereof, I hereby redelegate to the Deputy Assistant Attorney General, certain Section Chiefs, and to the United States Attorneys, the following authority to act in connection with, and to compromise, Land and Natural Resources Division cases:

SECTION I—AUTHORITY TO INITIATE CASES

A. *Delegation to United States Attorneys*—1. *Land Cases.* United States Attorneys are hereby authorized to act in matters concerning real property of the United States, including tribal and restricted individual Indian land, not involving new or unusual questions or questions of title or water rights, on behalf of any other department or agency in response to a direct request in writing from an authorized field officer of the department or agency concerned, without prior authorization from the Land and Natural Resources Division, in the following-described cases:

(a) Actions to recover possession of property from tenants, squatters, trespassers, or others, and actions to enjoin trespasses on Federal property;

(b) Actions to recover damages resulting from trespasses when the amount of the claim for actual damage based upon an innocent trespass does not exceed $100,000 (The United States Attorneys may seek recovery of amounts exceeding $100,000 (i) if the actual damages are $100,000 or less and State statutes permit the recovery of multiple damages, e.g., double or treble, for either a willful or an innocent trespass; or (ii) if the actual damages are $100,000 or less, but the action is for conversion to obtain recovery of the enhanced value of property severed and removed in the trespass);

(c) Actions to collect delinquent rentals or damages for use and occupancy of not more than $100,000;

(d) Actions to collect costs of forest fire suppression and other damages resulting from such fires if the total claim does not exceed $100,000;

(e) Actions to collect delinquent operation and maintenance charges accruing on Indian irrigation projects and federal reclamation projects of not more than $100,000; and

(f) Actions to collect loans of money or livestock made by the United States to individual Indians without limitation on amount, including loans made by Indian tribal organizations to individual Indians if the loan agreements, notes and securities have been assigned by the tribal organizations to the United States.

2. *Environmental cases.* Pursuant to paragraph 10 of the memorandum of understanding between the Department of Justice and the Environmental Protection Agency (42 FR 48942) with respect to the handling of litigation to which the Environmental Protection Agency is a party, all requests of the Environmental Protection Agency for litigation must be submitted by the Agency through its General Counsel or its Assistant Administrator for Enforcement to the Assistant Attorney General, except that matters requiring an immediate temporary restraining order may be submitted by regional Administrators of the Environmental Protection Agency simultaneously to a U.S. Attorney and the Assistant Attorney General. Consequently, except for matters requiring an immedate temporary restraining order, U.S. Attorneys are not authorized to accept on a direct reference basis any matters or cases originating in any office of the Environmental Protection Agency.

U.S. Attorneys are authorized to act, without prior authorization from the Land and Natural Resources Division, on behalf of Federal departments or agencies other than the Environmental Protection Agency, in response to a direct request in writing from an authorized field officer of the department or agency concerned, in the following environmental cases:

(a) Civil or criminal actions involving the filling or the deposit of dredged or fill material upon, or the alteration of the channels of, the waters of the United States, in violation of section 10 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 403), or of section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1344), or of both statutes;

(b) Civil or criminal actions involving the discharge of refuse into the navigable waters of the United States, and, in certain cases, their tributaries, in violation of section 13 of the Act of March 3, 1899 (33 U.S.C. 407), except for

(i) In rem actions against vessels, which actions shall continue to be handled in the manner set forth in departmental memorandums 374 and 376, dated June 3, 1964, and shall continue to be under the jurisdiction of the Civil Division; and

(ii) Criminal actions involving the discharge either of oil or of hazardous substances, for which discharge a government agency either has imposed a civil penalty pursuant to section 311(b)(6) of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1321(b)(6)), or has under consideration the imposition of such a penalty.

3. *Notification to Division of Direct Referral.* In each case referred to the United States Attorneys pursuant to the authority set forth in Subparagraphs 1 and 2 above, the United States Attorney shall, prior to taking action, assure that a copy of the authorized field officer's written request has been forwarded to the Assistant Attorney General, Land and Natural Resources Divi-

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sion, Department of Justice, Washington, D.C., 20530.

SECTION II—AUTHORITY TO COMPROMISE, DISMISS, OR CLOSE CASES

A. *Delegation to Deputy Assistant Attorney General.* Subject to the limitations imposed by Paragraph D of this Section, the Deputy Assistant Attorney General in the Land and Natural Resources Division is hereby authorized, with respect to matters assigned to the Land and Natural Resources Division, to accept or reject offers in compromise of claims against the United States in which the amount of the proposed settlement does not exceed $250,000, and of claims in behalf of the United States in which the gross amount of the original claim does not exceed $250,000.

B. *Delegation to Section Chiefs.* Subject to the limitations imposed by Paragraph D of this Section, the Chiefs of the Land Acquisition, Indian Claims, Pollution Control, Indian Resources, and General Litigation Sections of the Land and Natural Resources Division are hereby authorized, with respect to matters assigned to their respective sections, to accept or reject offers in compromise of claims against the United States in which the amount of the proposed settlement does not exceed $200,000, and of claims in behalf of the United States in which the gross amount of the original claim does not exceed $200,000.

C. *Delegations to United States Attorneys*—1. *Compromise of land cases.* Subject to the limitations imposed by paragraph D of this section, U.S. Attorneys are authorized, without the prior approval of the Land and Natural Resources Division, to accept or reject offers in compromise in the direct referral land cases listed in subparagraph A-1 of section I, and in claims against the United States in which the amount of the proposed settlement does not exceed $100,000, if the authorized field officer of the interested agency concurs in writing, except that where the United States is a plaintiff, a U.S. Attorney may accept an offer without the concurrence of the field officer if the acceptance is based solely upon the financial circumstances of the debtor.

2. *Compromise of environmental cases.* Prior delegations of authority to the U.S. Attorneys to settle any type of case in which the Department of Justice represents the Environmental Protection Agency, or the Administrator or any other official of that Agency, are hereby revoked; all offers in compromise of such cases shall be submitted to the Assistant Attorney General of the Land and Natural Resources Division, for appropriate action.

3. *Compromise of Condemnation Cases.* (a) Subject to the limitations imposed in Paragraph D of this section, United States Attorneys are hereby authorized, without the prior approval of the Land and Natural Resources Division, to accept or reject offers in compromise of claims against the United States for just compensation in condemnation proceedings in any case in which

(i) The gross amount of the proposed settlement does not exceed $100,000; and

(ii) The settlement is approved in writing (the written approval to be retained in the file of the United States Attorney concerned) by the authorized field representative of the acquiring agency if the amount of the settlement exceeds the amount deposited with the declaration of taking as to the particular tract of land involved; and

(iii) The amount of the settlement is compatible with the sound appraisal, or appraisals, upon which the United States would rely as evidence in the event of trial, due regard being had for probable minimum trial costs and risks; and

(iv) The case does not involve the revestment of any land or improvements or any interest, or interests, in land under the Act of October 21, 1942, 56 Stat. 797 (40 U.S.C. 258f). 3(b). When a United States Attorney has settled a condemnation proceeding under the authority conferred upon him by the foregoing subparagraph, he shall promptly secure the entry of judgment and distribution of the award, and shall take all other steps necessary to dispose of the matter completely. The United States Attorney concerned shall also immediately forward to the Department a report, in the form of a letter or memorandum, bearing his signature or showing his personal approval, stating the action taken and containing an adequate statement of the reasons therefor. In routine cases, a form, containing the minimum elements of the required report, may be used in lieu of a letter or memorandum. In any case, special care shall be taken to see that the report contains a statement as to what the valuation testimony of the United States would have been if the case had been tried.

4. *Closing or Dismissal of Matters and Cases.* Subject to the limitations imposed in Paragraph D of this section, a direct referral matter described in Section I may be closed without action by the United States Attorney or, if filed in court, may be dismissed by him, if the field officer of the interested agency concurs in writing that it is without merit legally or factually. Except for claims on behalf of Indians or Indian tribes, the United States Attorney may close a claim without consulting the field officer of the interested agency if the claim is for money only and if he concludes (a) that the cost of collection under the circumstances would exceed the amount of the claim, or (b) that the claim is uncollectable. With respect to claims asserted by the United

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States on behalf of individual Indians or Indian tribes, the United States Attorney may close a claim without consulting the field officer of the interested agency if the claim is for money only and if he concludes that the claim is uncollectable; claims on behalf of Indian individuals and tribes may not be closed merely because the cost of collection might exceed the amount of the claim.

D. *Limitations on delegations.* The authority to compromise, close or dismiss cases delegated by Paragraphs A, B and C of this section may not be exercised when,

(a) For any reason, the compromise of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totaling more than the respective amounts designated above;

(b) Because a novel question of law or a question of policy is presented, or for any other reason, the offer should, in the opinion of the officer or employee concerned, receive the personal attention of the Assistant Attorney General in charge of the Land and Natural Resources Division; and

(c) The agency or agencies involved are opposed to the proposed closing or dismissal of a case, or acceptance or rejection of the offer in compromise.

If any of the conditions listed above exist, the matter shall be submitted for resolution to the Assistant Attorney General in charge of the Land and Natural Resources Division.

Effective date of this directive. This Directive shall be effective on December 8, 1976.

[41 FR 53660, Dec. 8, 1976, as amended at 43 FR 36069, Aug. 15, 1978]

TAX DIVISION

[Directive No. 27]

NOTE: Tax Division, Directive No. 27, was superseded by Tax Division, Directive No. 28, appearing at 41 FR 53005, Dec. 3, 1976.

[Directive No. 28]

NOTE: Tax Division, Directive No. 28, was superseded by Tax Division, Directive No. 31, appearing at 43 FR 36438, Aug. 17, 1978.

[Memo No. 391]

NOTE: Tax Division Memo No. 391 was superseded by Tax Division Directive No. 29.

[Directive No. 29]

NOTE: Tax Division, Directive No. 29 was superseded by Tax Division, Directive No. 30, appearing at 43 FR 36438, Aug. 17, 1978.

[Directive No. 30]

REDELEGATION OF AUTHORITY TO RELEASE RIGHTS OF REDEMPTION IN CERTAIN CASES

By virtue of the authority vested in me by Part O of Title 28 of the Code of Federal Regulations, particularly §§ 0.70, 0.160, 0.162, 0.164, 0.166, and 0.168, it is hereby ordered as follows:

SECTION 1. The U.S. Attorney for each district in which is located real property, which is subject to a right of redemption of the United States in respect of Federal tax liens, arising under section 2410(c) of Title 28 of the United States Code, or under State law when the United States has been joined as a party to a suit, is authorized to release the right of redemption, subject to the following limitations and conditions—

(1) This redelegation of authority relates only to real property on which is located only one single-family residence, and to all other real property having a fair market value not exceeding $60,000. That limitation as to value or use shall not apply in those cases in which the release is requested by the Veterans Administration or any other Federal agency.

(2) The consideration paid for the release must be equal to the value of the right of redemption, or fifty dollars ($50), whichever is greater. However, no consideration shall be required for releases issued to the Veterans Administration or any other Federal agency.

(3) The following described documents must be place in the U.S. Attorney's file in each case in which a release is issued—

(A) The favorable recommendation of the appropriate Regional Counsel of the Internal Revenue Service.

(B) Appraisals by two disinterested and well-qualified persons. In those cases in which the applicant is a Federal agency, the appraisal of that agency may be substituted for the two appraisals generally required.

(C) Such other information and documents as the Tax Division may prescribe.

SEC. 2. This directive supersedes Tax Division Directive No. 29, approved November 22, 1976.

SEC. 3. This directive shall become effective August 1, 1978.

[43 FR 36438, Aug. 17, 1978]

[Directive No. 31]

NOTE: Tax Division, Directive No. 31 was superseded by Tax Division, Directive No. 36, appearing at 45 FR 20799, Mar. 31, 1980.

[Directive No. 36]

NOTE: Tax Division, Directive No. 36 was superseded by Tax Division, Directive No. 40, appearing at 45 FR 81201, Dec. 10, 1980

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and redesignated as Directive No. 41 appearing at 46 FR 52352, Oct. 27, 1981.

[Directive No. 41]

REDELEGATION OF AUTHORITY TO COMPROMISE AND CLOSE CIVIL CLAIMS

Section 1. The Chiefs of the Civil Trial Sections, the Court of Claims Section, and the Appellate Section are authorized to reject offers in compromise, regardless of amount, without reference to the Review Section, provided that such action is not opposed by the agency or agencies involved.

Section 2. Subject to the conditions and limitations set forth in Section 6 hereof, the Chiefs of the Civil Trial Sections and Court of Claims Section are authorized to accept offers in compromise in all cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $50,000, provided that such action is not opposed by the agency or agencies involved.

Section 3. Subject to the conditions and limitations set forth in Section 6 hereof, the Chief of the Appellate Section is authorized to accept offers in compromise with reference to litigating hazards of the issues on appeal in all cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $50,000, provided that such action is not opposed by the agency or agencies involved or the chief of the section in which the case originated.

Section 4. Subject to the conditions and limitations set forth in Section 6 hereof, the Chief of the Review Section shall have authority to:

(A) Accept offers in compromise of claims against the Government in all cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $500,000,

(B) Approve administrative settlements not exceeding $500,000,

(C) Accept offers in compromise of claims in behalf of the Government in all cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed $250,000 or 10 percent of the original claim, whichever is greater,

(D) Approve concessions (other than by compromise) of civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed $250,000, and

(E) Reject offers in compromise, or disapprove administrative settlements or concessions, regardless of amount,

provided that the action is not opposed by the agency or agencies involved or the chief of the section to which the case is assigned, and provided further that the limiting amount in (A) and (B) shall be $200,000 if the case is subject to reference to the Joint Committee on Taxation.

Section 5. Subject to the conditions and limitations set forth in Section 6 hereof, the Deputy Assistant Attorneys General each shall have authority to:

(A) Accept offers in compromise of claims against the Government in all cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $500,000,

(B) Approve administrative settlements not exceeding $500,000,

(C) Accept offers in compromise of claims in behalf of the Government in all cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed $250,000 or 10 percent of the original claim, whichever is greater,

(D) Approve concessions (other than by compromise) of civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed $250,000, and

(E) Reject offers in compromise, or disapprove administrative settlements or concessions, regardless of amount,

provided that such action is not opposed by the agency or agencies involved, and provided further that the limiting amount in (A) and (B) shall be $200,000 if the case is subject to reference to the Joint Committee on Taxation.

Section 6. The authority redelegated herein shall be subject to the following conditions and limitations:

(A) When, for any reason, the compromise or administrative settlement or concession of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totalling more than the respective amounts designated in Sections 2, 3, 4 and 5, the case shall be forwarded for review at the appropriate level.

(B) When, because of the importance of a question of law or policy presented, the position taken by the agency or agencies or by the United States Attorney involved, or any other considerations, the person otherwise authorized herein to take final action (or the Chief of the Review Section, in cases which have been considered by such section) is of the opinion that the proposed disposition should be reviewed at a higher level, the case shall be forwarded for such review.

(C) Nothing in this Directive shall be construed as altering any provision of Subpart Y of Part 0 of Title 28 of the Code of Federal Regulations requiring the submission of certain cases to the Attorney General, the Deputy Attorney General, or the Solicitor General.

(D) Authority to approve recommendations that the Government confess error, or

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make administrative settlements, in cases on appeal, is excepted from the foregoing redelegations.

(E) The Assistant Attorney General, at any time, may withdraw any authority delegated by this Directive as it relates to any particular case or category of cases, or to any part thereof.

Section 7. This Directive supersedes Tax Division Directive No. 40, effective December 10, 1980.

Section 8. This Directive shall become effective on the date of its publication in the FEDERAL REGISTER.

[45 FR 81201, Dec. 10, 1981. Redesignated and amended by Order No. 960-81, 46 FR 52352, Oct. 27, 1981]

Subpart Z—Assigning Responsibility Concerning Applications for Orders Compelling Testimony or Production of Evidence by Witnesses

AUTHORITY: 28 U.S.C. 509 and 510; 5 U.S.C. 301; 18 U.S.C. 6003(b); sec. 501, Comprehensive Drug Abuse Prevention and Control Act of 1970 (Pub. L. 91-513).

§ 0.175 Judicial and administrative proceedings.

(a) The Assistant Attorney General in charge of the Criminal Division is authorized to exercise the authority vested in the Attorney General by 18 U.S.C. 6003, to approve the application of a U.S. attorney to a Federal court for an order compelling testimony or the production of information by a witness in any proceeding before or ancillary to a court or grand jury of the United States, and the authority vested in the Attorney General by 18 U.S.C. 6004, to approve the issuance by an agency of the United States of an order compelling testimony or the production of information by a witness in a proceeding before the agency, when the subject matter of the case or proceeding is either within the cognizance of the Criminal Division or is not within the cognizance of the Divisions or Administration designated in paragraphs (b) and (c) of this section.

(b) The Assistant Attorneys General in charge of the Antitrust Division, the Civil Division, the Civil Rights Division, the Land and Natural Resources Division, and the Tax Division are authorized to exercise the power and authority vested in the Attorney General by 18 U.S.C. 6003; to approve the application of a U.S. Attorney to a Federal court for an order compelling testimony or the production of information in any proceeding before or ancillary to a court or grand jury of the United States when the subject matter of the case or proceeding is within the cognizance of their respective Divisions: *Provided, however,* That no approval shall be granted unless the Criminal Division indicates that it has no objection to the proposed grant of immunity.

(c) The Assistant Attorneys General designated in paragraph (b) of this section, and the Administrator of the Drug Enforcement Administration are authorized to exercise the authority vested in the Attorney General by section 6004 of Title 18, United States Code, to approve the issuance by an agency of the United States of an order compelling testimony or the production of information by a witness in a proceeding before the agency when the subject matter of the proceeding is within the cognizance of their respective Divisions or the Administration: *Provided, however,* That no approval shall be granted unless the Criminal Division indicates that it has no objection to the proposed grant of immunity.

[Order No. 445-70, 35 FR 19397, Dec. 23, 1970, as amended by Order No. 520-73, 38 FR 18381, July 10, 1973; Order No. 541-73, 38 FR 27285, Oct. 2, 1973; Order No. 960-81, 46 FR 52353, Oct. 27, 1981]

§ 0.176 Congressional proceedings.

(a) A notice of an intention to request an order from a district court compelling testimony or the production of information in a congressional proceeding when submitted to the Attorney General by either House of Congress or a committee or a subcommittee of the Congress pursuant to 18 U.S.C. 6005 shall be referred to the Assistant Attorney General of the Division or the Administrator of the Administration having cognizance of the subject matter of the proceedings: *Provided, however,* That either the notice or a copy thereof shall in any event be referred to the Assistant Attorney General in charge of the Criminal Division.

(b) The Assistant Attorney General in charge of the Criminal Division and the Assistant Attorney Generals designated in § 0.175(b) are authorized to exercise the power and authority vested in the Attorney General by 18 U.S.C. 6005 to apply to a district court of the United States to defer the issuance of an order compelling the testimony of a witness or the production of information in a proceeding before either House of Congress, or any committee or subcommittee of either House, or any joint committee of the two Houses.

[Order No. 445-70, 35 FR 19397, Dec. 23, 1970, as amended by Order No. 520-73, 38 FR 18381, July 10, 1973; Order No. 960-81, 46 FR 52353, Oct. 27, 1981]

§ 0.177 Applications for orders under the Comprehensive Drug Abuse Prevention and Control Act.

Notwithstanding the delegation of functions contained in Subpart R of this part, the Assistant Attorney General in charge of the Criminal Division is authorized to exercise the authority vested in the Attorney General by section 514 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 84 Stat. 1276, to approve the application of a U.S. Attorney to a Federal court for an order compelling testimony or the production of information in any proceeding before a court or grand jury of the United States. Immunity shall be granted in agency proceedings under that Act only with the concurrence of the Assistant Attorney General in charge of the Criminal Division.

[Order No. 445-70, 35 FR 19397, Dec. 23, 1970]

§ 0.177a Antitrust Civil Investigative Demands.

The Assistant Attorney General in charge of the Antitrust Division is authorized to issue orders pursuant to section 6004 of Title 18, United States Code, to compel testimony in response to antitrust civil investigative demands for oral testimony. Issuance of such orders shall be subject to the concurrence of the Assistant Attorney General in charge of the Criminal Division.

[Order No. 753-77, 42 FR 56730, Oct. 28, 1977]

§ 0.178 Redelegation of authority.

(a) The Assistant Attorney General in charge of the Criminal Division and the Assistant Attorneys General designated in § 0.175(b) are authorized to redelegate the authority delegated by this subpart to their respective Deputy Assistant Attorneys General to be exercised solely during the absence of such Assistant Attorneys General from the City of Washington.

(b) The Administrator of the Drug Enforcement Administration is authorized to redelegate the authority delegated by this subpart to the Deputy Administrator of DEA, to be exercised solely during the absence of the Administrator from the City of Washington.

[Order No. 445-70, 35 FR 19397, Dec. 23, 1970, as amended by Order No. 520-73, 38 FR 18381, July 10, 1973; Order No. 960-81, 46 FR 52354, Oct. 27, 1981]

Subpart Z-1—Prosecutions for Obstruction of Justice and Related Charges

§ 0.179 Scope.

This subpart applies to the following matters:

(a) Obstruction of justice and obstruction of a criminal investigation (18 U.S.C. 1501-1511);

(b) Perjury and subornation of perjury (18 U.S.C. 1621, 1622);

(c) False declarations before a grand jury or court (18 U.S.C. 1623);

(d) Fraud and false statements in matters within the jurisdiction of a government agency (18 U.S.C. 1001); and

(e) Conspiracy to defraud the United States (18 U.S.C. 371).

[Order No. 630-75, 40 FR 53390, Nov. 18, 1975]

§ 0.179a Enforcement responsibilities.

(a) Matters involving charges of obstruction of justice, perjury, fraud or false statement, as described in § 0.179, shall be under the supervisory jurisdiction of the Division having responsibility for the case or matter in which the alleged obstruction occurred. The

Assistant Attorney General in charge of each Division shall have full authority to conduct prosecution of such charges, including authority to appoint special attorneys to present evidence to grand juries. However, such enforcement shall be preceded by consultation with the Assistant Attorney General in charge of the Criminal Division, to determine the appropriate supervisory jurisdiction. (See 38 CFR 0.55(p).)

(b) In the event the Assistant Attorney General in charge of the Division having responsibility for the case or matter does not wish to assume supervisory jurisdiction he shall refer the matter to the Assistant Attorney General in charge of the Criminal Division for handling by that Division.

[Order No. 630-75, 40 FR 53390, Nov. 18, 1975]

Subpart AA—Orders of the Attorney General

SOURCE: Order No. 460-71, 36 FR 12096, June 25, 1971, unless otherwise noted.

§ 0.180 Documents designated as orders.

All documents relating to the organization of the Department or to the assignment, transfer, or delegation of authority, functions, or duties by the Attorney General or to general departmental policy shall be designated as orders and shall be issued only by the Attorney General in a separate, numbered series. Classified orders shall be identified as such, included within the numbered series, and limited to the distribution provided for in the order or determined by the Assistant Attorney General for Administration. All documents amending, modifying, or revoking such orders, in whole or in part, shall likewise be designated as orders within such numbered series, and no other designation of such documents shall be used.

§ 0.181 Requirements for orders.

Each order prepared for issuance by or approval of the Attorney General shall be given a suitable title, shall contain a clear and concise statement explaining the substance of the order, and shall cite the authority for its issuance.

§ 0.182 Submission of proposed orders to the Office of Legal Counsel.

All orders prepared for the approval or signature of the Attorney General shall be submitted to the Office of Legal Counsel for approval as to form and legality and consistency with existing orders.

§ 0.183 Distribution of orders.

The distribution of orders, unless otherwise provided by the Attorney General, shall be determined by the Assistant Attorney General for Administration.

Subpart BB—Sections and Subunits

§ 0.190 Changes within organizational units.

(a) The head of each Office, Board, Division or Bureau may from time to time propose the establishment, transfer, reorganization or termination of major functions within his organizational unit as he may deem necessary or appropriate. In each instance, the head of the Office, Board, Division or Bureau shall submit the proposed change in writing to the Assistant Attorney General for Administration. The Assistant Attorney General for Administration shall evaluate the proposal and shall submit the proposed change, along with his recommendation, to the Associate Attorney when appropriate, and in all other cases directly to the Deputy Attorney General. Where the Associate Attorney General has received a proposed change, he shall evaluate it, and shall submit it along, with his recommendation, to the Deputy Attorney General. The Deputy Attorney General shall then approve or disapprove the change.

(b) The approval shall be final in the case of changes which do not affect the overall structure of the Department. Proposed changes which are determined by the Deputy Attorney General to affect the overall structure of the Department's organization shall be forwarded by the Deputy Attorney General to the Attorney General for final approval prior to implementation, and shall be effectuated by issuance of an Attorney General's order, in accordance with Subpart AA of this part.

[Order No. 960-81, 46 FR 52354, Oct. 27, 1981]

§ 0.191 Changes which affect the overall structure of the Department.

Changes to the overall structure of the Department include: The establishment, merger or abolishment of Offices, Boards, Divisions, and Bureaus; changes in reporting lines of Offices, Boards, Divisions and Bureaus to the Department; and transfers of major functions between or among Offices, Boards, Divisions and Bureaus.

[Order No. 808-78, 43 FR 54929, Nov. 24, 1978]

Subpart CC—Jurisdictional Disagreements

§ 0.195 Procedure with respect to jurisdictional disagreements.

Any disagreement between or among heads of the organizational units as to their respective jurisdictions shall be resolved by the Attorney General, who may, if he so desires, issue an order in the numbered series disposing of the matter.

§ 0.196 Procedures for resolving disagreements concerning mail or case assignments.

When an assignment for the handling of mail or a case has been made through established procedures and the appropriate authorities in any organizational unit of the Department disagree concerning jurisdiction of the unit for handling the matter or matters assigned, the disagreement, together with a statement of the view of the unit or units involved, shall be referred to the Assistant Attorney General for Administration for determination. If the disagreement cannot be resolved, the matter shall be referred to the Deputy Attorney General for final disposition.

[Order No. 900-80, 45 FR 43703, June 30, 1980]

PART 1—EXECUTIVE CLEMENCY

Sec.

1.1 Submission of petition; form to be used.
1.2 Contents of petition.
1.3 Eligibility for filing petition for pardon.
1.4 Eligibility for filing petition for commutation of sentence.
1.5 Offenses against the laws of possessions or territories of the United States.
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1.7 Consideration of petitions by the Attorney General; recommendations to the President.
1.8 Notification of grant of clemency.
1.9 Notification of denial of clemency.

AUTHORITY: U.S. Const., Art. II, sec. 2, and authority of the President as Chief Executive.

SOURCE: Order No. 288-62, 27 FR 11002, Nov. 10, 1962, unless otherwise noted.

CROSS REFERENCE: For Organization Statement, Office of the Pardon Attorney, see Subpart G of Part O of this Chapter.

§ 1.1 Submission of petition; form to be used.

Persons seeking Executive clemency, by pardon or by commutation of sentence, including remission of fine, shall execute formal petitions therefor which shall be addressed to the President of the United States and which, except those relating to military or naval offenses, shall be submitted to the Attorney General of the United States. Appropriate forms for such petitions will be furnished by the Department of Justice, Washington, D.C., upon application therefor. Forms for petition for commutation of sentence may also be obtained from the warden of Federal penal institutions. A petitioner applying for Executive clemency with respect to military or naval offenses should submit his petition directly to the Secretary of the military department which had original jurisdiction over the court-martial trial and conviction of the petitioner. In such instance, a form furnished by the Department of Justice may be used but should be modified to meet the needs of the particular case.

(28 U.S.C. 509 and 510; 5 U.S.C. 301 and 8 U.S.C. 1103)

[Order No. 960-81, 46 FR 52354, Oct. 27, 1981]

§ 1.2 Contents of petition.

Each petition for Executive clemency should include: The name and age of the petitioner; the court, district, and State in which he was convicted; the date of sentence; the crime of which he was convicted; the sentence imposed; the date he commenced service of sentence; and the place of confinement. In the case of a petition for pardon, the petitioner should also state his age at the time of commission of the offense; the date of release from confinement; whether he is a citizen of the United States or an alien; his marital status; his prior and subsequent criminal record, if any; his employment since conviction; and his place of residence. A petition may be accompanied by endorsements. It is desirable that all applications for pardon be accompanied by at least three character affidavits.

§ 1.3 Eligibility for filing petition for pardon.

No petition for pardon should be filed until the expiration of a waiting period of at least three years subsequent to the date of the release of the petitioner from confinement, or, in case no prison sentence was imposed, until the expiration of a period of at least three years subsequent to the date of the conviction of the petitioner. In some cases, such as those involving violation of narcotic laws, income tax laws, perjury, violation of public trust involving personal dishonesty, or other crimes of a serious nature a waiting period of five years is usually required. In cases of aliens seeking a pardon to avert deportation, the waiting period may be waived. Generally, no petition should be submitted by a person who is on probation or parole.

§ 1.4 Eligibility for filing petition for commutation of sentence.

A petition for commutation of sentence, including remission of fine, should be filed only if no other form of relief is available, such as from the court or the United States Parole Commission or if unusual circumstances exist, such as critical illness, severity of sentence, ineligibility for parole, or meritorious service rendered by the petitioner.

(28 U.S.C. 509 and 510; 5 U.S.C. 301 and 8 U.S.C. 1103)

[Order No. 288-62, 27 FR 11002, Nov. 10, 1962, as amended by Order No. 960-81, 46 FR 52354, Oct. 27, 1981]

§ 1.5 Offenses against the laws of possessions or territories of the United States.

Petitions for Executive clemency shall relate only to violations of laws of the United States. Petitions relating to violations of laws of the possessions of the United States or territories subject to the jurisdiction thereof should be submitted to the appropriate official or agency of the possession or territory concerned.

§ 1.6 Disclosure of files.

Reports, memoranda, and communications submitted or furnished in connection with the consideration of a petition for Executive clemency shall be available only to officials concerned with the consideration of the petition: *Provided*, That they may be open to inspection by the petitioner or by his attorney or other representative if, in the opinion of the Attorney General or his representative, the disclosure sought is required by the ends of justice.

§ 1.7 Consideration of petitions by the Attorney General; recommendations to the President.

(a) Upon receipt of a petition for Executive clemency, the Attorney General shall consider that petition and cause such investigation to be made with respect thereto as he may deem appropriate and necessary, using the services of, or obtaining reports from appropriate officials and agencies of the Government, including the Federal Bureau of Investigation, to the extent deemed necessary or desirable.

(b) The Attorney General shall review each petition and all pertinent information developed by his investigation thereof and shall advise the President whether, in his judgment, the request for clemency is of sufficient merit to warrant favorable action by the President.

(c) If he determines that the request merits favorable action by the President, he shall submit the petition to the President together with a warrant prepared for the signature of the President granting the clemency recommended by the Attorney General.

(d) If he determines that the petition and information developed by his investigation do not, in his judgment, merit favorable action by the President, he shall provide the President with a concise statement enumerating the essential facts concerning the petitioner, the petition, and his reasons for recommending denial of clemency.

§ 1.8 Notification of grant of clemency.

When a petition for pardon is granted, the petitioner or his attorney shall be notified of such action, and the warrant of pardon shall be mailed to the petitioner. When commutation of sentence is granted, the petitioner shall be notified of such action, and the warrant of commutation shall be sent to the petitioner through the officer in charge of his place of confinement, or directly to the petitioner if he is on parole.

§ 1.9 Notification of denial of clemency.

(a) Whenever the President notifies the Attorney General that he is denying a request for clemency, the Attorney General, or at his direction the Pardon Attorney, shall so advise the petitioner and close the case.

(b) Whenever the Attorney General recommends that the President deny a request for clemency and the President does not disapprove or take other action with respect to that adverse recommendation within thirty days after the date of its submission to him, it shall be presumed that the President concurs in that adverse recommendation of the Attorney General, and the Attorney General, or at his direction the Pardon Attorney, shall so advise the petitioner and close the case.

PART 2—PAROLE, RELEASE, SUPERVISION AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS

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AUTHORITY: 28 CFR Chapter I. Part O. Subpart I: 18 U.S.C. 3655, 4164, 4201-4218, 4254-5, and 5005-5041, unless otherwise noted.

SOURCE: 42 FR 39809, Aug. 5, 1977, unless otherwise noted.

§ 2.1 Definitions.

As used in this part:

(a) The term "Commission" refers to the United States Parole Commission.

(b) The term "Commissioner" refers to members of the United States Parole Commission.

(c) The term "National Appeals Board" refers to the Vice Chairman of the Commission and two other National Commissioners who are assigned in the headquarters office of the Commission in Chevy Chase, Maryland. The Vice Chairman shall be the Chairman of the National Appeals Board. In the absence or vacancy of the Vice Chairman, the Chairman of the Commission functions as the Chairman of the National Appeals Board. In the absence or vacancy of a member the Chairman of the Commission functions as a member of the National Appeals Board.

(d) The term "National Commissioners" refers to the Chairman of the Commission and the three members of the National Appeals Board. The Vice Chairman of the Commission shall be the presiding officer of the National Commissioners. In the absence or vacancy of the Vice Chairman, the Chairman of the Commission shall be presiding officer of the National Commissioners.

(e) The term "Regional Commissioner" refers to Commissioners assigned to the Commission's regional offices.

(f) The term "eligible prisoner" refers to any Federal prisoner eligible for parole pursuant to this Part and includes any Federal prisoner whose parole has been revoked and who is not otherwise ineligibile for parole.

(g) The term "parolee" refers to any Federal prisoner released on parole or as if on parole pursuant to 18 U.S.C. 4164 or 4205(f). The term "mandatory release" refers to release pursuant to 18 U.S.C. 4163 and 4164.

(h) The term "effective date of parole" refers to a parole date that has been approved following an in-person hearing held within six months of such date, or following a pre-release record review.

(i) All other terms used in this part shall be deemed to have the same meaning as identical or comparable terms as used in Chapter 311 of Part IV of Title 18 of the United States Code or Chapter I, Part O, Subpart V of Title 28 of the Code of Federal Regulations.

[42 FR 39809, Aug. 5, 1977, as amended at 43 FR 22707, May 26, 1978; Order No. 960-81, 46 FR 52354, Oct 27, 1981]

§ 2.2 Eligibility for parole; adult sentences.

(a) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. 4205 (a) [or pursuant to former 18 U.S.C. 4202] may be released on parole in the discretion of the Commission after completion of one-third of such term or terms, or after completion of ten years of a life sentence or of a sentence of over thirty years.

(b) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. 4205(b)(1) [or pursuant to former 18 U.S.C. 4208(a)(1)] may be released on parole in the discretion of the Commission after completion of the court-designated minimum term, which may be less than but not more than one-third of the maximum sentence imposed.

(c) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. 4205(b)(2) [or pursuant to former 18 U.S.C. 4208(a)(2)] may be released on parole at any time in the discretion of the Commission.

(d) If the Court has imposed a maximum term or terms of more than one year pursuant to 18 U.S.C. 924(a) or 26 U.S.C. 5871 [violation of Federal gun control laws], a Federal prisoner serving such term or terms may be released at any time in the discretion of the Commission as if sentenced pursuant to 18 U.S.C. 4205(b)(2).

(e) A Federal prisoner serving a maximum term or terms of one year or less is not eligible for parole consideration by the Commission, except that a Federal prisoner sentenced prior to May 14, 1976, to a maximum term or terms of at least six months but not more than one year is eligible for parole consideration after service of one-third of such term or terms.

[42 FR 41408, Aug. 17, 1977]

§ 2.3 Same: Narcotic Addict Rehabilitation Act.

A Federal prisoner committed under the Narcotic Addict Rehabilitation Act may not be released on parole prior to completion of at least 6 months in treatment, not including any period of time for study prior to final judgment of the court. Before parole is ordered by the Commission, the Surgeon General or his designated representative must certify that the prisoner has made sufficient progress to warrant his release and the Attorney General or his designated representative must also report to the Commission whether the prisoner should be released. Recertification by the Surgeon General prior to reparole consideration is not required unless the revocation of parole was based on drug-related violations (18 U.S.C. 4254).

[42 FR 63774, Dec. 20, 1977]

§ 2.4 Same: Youth offenders and juvenile delinquents.

Committed youth offenders and juvenile delinquents may be released on parole at any time in the discretion of the Commission.

(18 U.S.C. 5017(a) and 5041)

[45 FR 44925, July 2, 1980]

§ 2.5 Sentence aggregation.

When multiple sentences are aggregated by the Bureau of Prisons pursuant to 18 U.S.C. 4161 and 4205, such sentences are treated as a single aggregate sentence for the purpose of every action taken by the Commission pursuant to these rules, and the prisoner has a single parole eligibility date as determined by the Bureau of Prisons.

[45 FR 44925, July 2, 1980]

§ 2.6 Withheld and forfeited good time.

While neither a forfeiture of good time nor a withholding of good time shall bar a prisoner from receiving a parole hearing, Section 4206 of Title 18 of the United States Code permits the Commission to parole only those prisoners who have substantially observed the rules of the institution.

[43 FR 38822, Aug. 31, 1978]

§ 2.7 Committed fines.

In any case in which a prisoner shall have had a fine imposed upon him by the committing court for which he is to stand committed until it is paid or until he is otherwise discharged according to law, such prisoner shall not be released on parole or mandatory release until payment of the fine, or until the fine commitment order is discharged according to law as follows:

(a) An indigent prisoner may make application to a U.S. Magistrate in the District wherein he is incarcerated or to the chief executive officer of the institution setting forth, under the institutional regulations, his inability to pay such fine; if the magistrate or chief executive officer shall find that the prisoner, having no assets exceeding $20 in value except such as are by law exempt from being taken on execution for debt, is unable to pay the fine, and if the prisoner takes a prescribed oath of indigency, he shall be discharged from the commitment obligation of the committed fine sentence.

(b) If the prisoner is found to possess assets in excess of the exemption in paragraph (a) of this section, nevertheless if the chief executive officer of the institution or U.S. Magistrate shall find that retention of all such assets is reasonably necessary for his support or that of his family, upon taking of the prescribed oath concerning his assets the prisoner shall be discharged from the commitment obligation of the committed fine sentence. If the chief executive officer of the institution or U.S. Magistrate shall find that retention by the prisoner of any part of his assets is reasonably necessary for his support or that of his family, the prisoner upon taking the prescribed oath concerning his assets, shall be discharged from the commitment obligation of the committed fine sentence upon payment on account of his fine of that portion of his assets in excess of the amount found to be reasonably necessary for his support or that of his family.

(c) Discharge from the commitment obligation of any committed fine does not discharge the prisoner's obligation to pay the fine as a debt due the United States.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3408, Jan. 16, 1979]

§ 2.8 Mental competency proceedings.

(a) Whenever a prisoner (or parolee) is scheduled for a hearing in accordance with the provisions of this part and reasonable doubt exists as to his mental competency, i.e., his ability to understand the nature of and participate in scheduled proceedings, a preliminary inquiry to determine his mental competency shall be conducted by the hearing panel, hearing examiner or other official (including a U.S. Probation Officer) designated by the Regional Commissioner.

(b) The hearing examiner(s) or designated official shall receive oral or written psychiatric or psychological testimony and other evidence that may be available. A preliminary determination of mental competency shall be made upon the testimony, evidence, and personal observation of the prisoner (or parolee). If the examiner(s) or designated official determines that the prisoner is mentally competent, the previously scheduled hearing shall be held. If they determine that the prisoner is not mentally competent, the previously scheduled hearing shall be temporarily postponed.

(c) Whenever the hearing examiner(s) or designated official determine that a prisoner is incompetent and postpone the previously scheduled hearing, they shall forward the record of the preliminary hearing with their findings to the Regional Commissioner for review. If the Regional Commissioner concurs with their findings, he shall order the temporarily postponed hearing to be postponed indefinitely until such time as it is determined that the prisoner has recovered sufficiently to understand the nature of and participate in the proceedings, and in the case of a parolee may order such parolee transferred to a Bureau of Prisons facility for further examination. In any such case, the Regional Commissioner shall require a progress report on the mental health of the prisoner at least every 6 months. When the Regional Commissioner determines that the prisoner has recovered sufficiently, he shall reschedule the hearing for the earliest feasible date.

(d) If the Regional Commissioner disagrees with the findings of the hearing examiner(s) or designated official as to the mental competency of the prisoner, he shall take such action as he deems appropriate.

[44 FR 3408, Jan. 16, 1979]

§ 2.9 Study prior to sentencing.

(a) When an adult Federal offender has been committed to an institution by the sentencing court for observation and study prior to sentencing, under the provisions of 18 U.S.C. 4205(c), the report to the sentencing court is prepared and submitted directly by the United States Bureau of Prisons.

(b) The court may order a youth to be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Commission shall report its findings to the court (18 U.S.C. 5010(e)).

§ 2.10 Date service of sentence commences.

(a) Service of a sentence of imprisonment commences to run on the date on which the person is received at the penitentiary, reformatory, or jail for service of the sentence: *Provided, however,* That any such person shall be allowed credit toward the service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed.

(b) The imposition of a sentence of imprisonment for civil contempt shall interrupt the running of any sentence of imprisonment being served at the time the sentence of civil contempt is imposed, and the sentence or sentences so interrupted shall not commence to run again until the sentence of civil contempt is lifted.

(c) Service of the sentence of a committed youth offender or a person committed under the Narcotic Addict Rehabilitation Act commences to run from the date of conviction and is interrupted only when such prisoner or parolee: (1) Is on bail pending appeal; (2) is in escape status; (3) has absconded from parole supervision; or (4) comes within the provisions of paragraph (b) of this section.

[42 FR 39809, Aug. 5, 1977, as amended at 42 FR 52399, Sept. 30, 1977]

§ 2.11 Application for parole; notice of hearing.

(a) A federal prisoner (including a committed youth offender or prisoner sentenced under the Narcotic Addict Rehabilitation Act) desiring to apply for parole shall execute an application form as prescribed by the Commission. Such forms shall be available at each federal institution and shall be provided to each prisoner who is eligible for an initial parole hearing pursuant to § 2.12. Prisoners committed under the Federal Juvenile Delinquency Act shall be considered for parole without application and may not waive parole consideration. A prisoner who receives an initial hearing need not apply for subsequent hearings.

(b) A prisoner may knowingly and intelligently waive any parole consideration on a form provided for that purpose. If a prisoner waives parole consideration, he may later apply for parole and may be heard during the next visit of the Commission to the institution at which he is confined, provided that he has applied at least 45 days prior to the first day of the month in which such visit of the Commission occurs.

(c) A prisoner who declines either to apply for or waive parole consideration is deemed to have waived parole consideration.

(d) In addition to the above procedures relating to parole application, all prisoners prior to initial hearing shall be provided with an inmate background statement by the Bureau of Prisons for completion by the prisoner.

(e) At least sixty days prior to the initial hearing (and prior to any hearing conducted pursuant to § 2.14), the prisoner shall be provided with written notice of the time and place of the hearing and of his right to review the documents to be considered by the Commission, as provided by § 2.55. A prisoner may waive such notice, except that if such notice is not waived, the case shall be continued to the time of the next regularly scheduled proceeding of the Commission at the institution in which the prisoner is confined.

[42 FR 39809, Aug. 5, 1977, as amended at 45 FR 6381, Jan. 28, 1980; 47 FR 21041, May 17, 1982]

§ 2.12 Initial hearings: Setting presumptive release dates.

(a) An initial hearing shall be conducted within 120 days of a prisoner's arrival at a Federal institution or as soon thereafter as practicable; except that in the case of a prisoner with a minimum term of parole ineligibility of ten years or more, the initial hearing shall be conducted at least 30 days prior to the completion of such minimum term, or as soon thereafter as practicable.

(b) Following initial hearing, the Commission shall: (1) Set a presumptive release date (either by parole or by mandatory release) within ten years of the hearing; (2) set an effective date of parole; or (3) continue the prisoner to a ten-year reconsideration hearing pursuant to § 2.14(c).

(c) Notwithstanding the above paragraph, a prisoner may not be paroled earlier than the completion of any judicially set minimum term of imprisonment or other period of parole ineligibility fixed by law.

(d) A presumptive parole date shall be contingent upon an affirmative finding by the Commission that the prisoner has a continued record of good conduct and a suitable release plan and shall be subject to the provisions of §§ 2.14 and 2.28. In the case of a prisoner sentenced under the Narcotic Addict Rehabilitation Act, 18 U.S.C. 4254, a presumptive parole date shall also be contingent upon certification by the Surgeon General pursuant to § 2.3 of these rules. Consideration of disciplinary infractions in cases with presumptive parole dates may be deferred until the commencement of the next in-person hearing or the prerelease record review required by § 2.14(b). While prisoners are encouraged to earn the restoration of forfeited or withheld good time, the Commission will consider the prisoner's overall institutional record in determining whether the conditions of a presumptive parole date have been satisfied.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3405, 3407, Jan. 16, 1979]

§ 2.13 Initial hearing; procedure.

(a) An initial hearing shall be conducted by a panel of two hearing examiners. The examiners shall discuss with the prisoner his offense severity rating and salient factor score as described in § 2.20, his institutional conduct and, in addition, any other matter the panel may deem relevant.

(b) A prisoner may be represented at a hearing by a person of his choice. The function of the prisoner's representative shall be to offer a statement at the conclusion of the interview of the prisoner by the examiner panel, and to provide such additional information as the examiner panel shall request. Interested parties who oppose parole may select a representative to appear and offer a statement. The presiding hearing examiner shall limit or exclude any irrelevant or repetitious statement.

(c) At the conclusion of the hearing, the panel shall orally inform the prisoner of its recommendation and of the reasons therefor. Written notice of the official decision, or the decision to refer under §§ 2.17 or 2.24, shall be mailed or transmitted to the prisoner within 21 days of the date of the hearing, except in emergencies. Whenever the Commission initially establishes a release date (or modifies a release date thereafter), the prisoner shall also receive in writing the reasons for that decision.

(d) In accordance with 18 U.S.C. 4206, reasons for parole denial may include the following, with further specification as appropriate:

(1) The prisoner has not substantially observed the rules of the institution or institutions in which confined;

(2) Release, in the opinion of the Commission, would depreciate the seriousness of the offense or promote disrespect for the law; or

(3) Release, in the opinion of the Commission, would jeopardize the public welfare.

In lieu of, or in combination with, the above reasons the prisoner shall be furnished with a guidelines evaluation statement containing his offense severity rating and salient factor score (including the points credited on each item of such score) as described in § 2.20, as well as the specific factors and information relied upon for any decision to continue such prisoner for a period outside the range indicated by the guidelines.

(e) No interviews with the Commission, or any representative thereof, shall be granted to a prisoner unless his name is docketed for a hearing in accordance with Commission procedures. Hearings shall not be open to the public.

(f) A full and complete record of every hearing shall be retained by the Commission. Upon a request, pursuant to § 2.56, the Commission shall make available to any eligible prisoner such record as the Commission has retained of the hearing.

[42 FR 39809, Aug. 5, 1977, as amended at 45 FR 6381, Jan. 28, 1980; 47 FR 25736, June 15, 1982]

§ 2.14 Subsequent proceedings.

(a) *Interim proceedings.* The purpose of an interim hearing required by 18 U.S.C. 4208(h) shall be to consider any significant developments or changes in the prisoner's status that may have occurred subsequent to the initial hearing.

(1) Notwithstanding a previously ordered presumptive release date or ten-year reconsideration hearing, interim hearings shall be conducted by an examiner panel pursuant to the procedures of § 2.13(b), (c) (e), and (f) at the following intervals from the date of the last hearing:

(i) In the case of a prisoner with a maximum term or terms of less than seven years, every eighteen months (until released);

(ii) In the case of a prisoner with a maximum term or terms of seven years, every twenty four-months (until released).

(iii) However, in the case of a prisoner with an unsatisfied minimum term, the first interim hearing shall be deferred until the docket of hearings immediately proceeding the month of parole eligibility.

(2) Following an interim hearing, the Commission may:

(i) Order no change in the previous decision;

(ii) Advance a presumptive release date, or the date of a ten-year reconsideration hearing. However, it shall be the policy of the Commission that once set, a presumptive release date or the date of a ten-year reconsideration hearing shall be advanced only: (1) For superior program achievement under the provisions of § 2.60; or (2) for other clearly exceptional circumstances.

(iii) Retard or rescind a presumptive parole date for reason of disciplinary infractions. In a case in which disciplinary infractions have occurred, the interim hearing shall be conducted in accordance with the procedures of § 2.34(c)-(g). (Prior to each interim hearing, prisoners shall be notified on the progress report furnished by the Federal Prison System that any finding of misconduct by an Institutional Disciplinary Committee since the previous hearing will be considered for possible action under this subsection);

(iv) If a presumptive date falls within six months after the date of an interim hearing, the Commission may treat the interim hearing as a pre-release review in lieu of the record review required by paragraph (b) of this section.

(b) *Pre-Release reviews.* The purpose of a pre-release review shall be to determine whether the conditions of a presumptive release date by parole have been satisfied.

(1) At least sixty days prior to a presumptive parole date, the case shall be reviewed on the record, including a current institutional progress report.

(2) Following review, the Regional Commissioner may:

(i) Approve the parole date;

(ii) Advance or retard the parole date for purpose of release planning as provided by § 2.28(e);

(iii) Retard the parole date or commence rescission proceedings as provided by § 2.34;

(iv) Advance the parole date for superior program achievement under the provisions of § 2.60.

(3) A pre-release review pursuant to this section shall not be required if an in-person hearing has been held within six months of the parole date.

(c) *Ten-year reconsideration hearings.* A ten-year reconsideration hearing shall be a full reassessment of the case pursuant to the procedures at § 2.13.

(1) A ten-year reconsideration hearing shall be ordered following initial hearing in any case in which a release date is not set.

(2) Following a ten-year reconsideration hearing, the Commission may take any one of the actions authorized by § 2.12(b).

[46 FR 39136, July 31, 1981; 47 FR 25735, June 15, 1982]

§ 2.15 Petition for consideration of parole prior to date set at hearing.

When a prisoner has served the minimum term of imprisonment required by law, the Bureau of Prisons may petition the responsible Regional Commissioner for reopening the case under § 2.28(a) and consideration for parole prior to the date set by the Commission at the initial or review hearing. The petition must show cause why it should be granted, i.e., an emergency, hardship, or the existence of other extraordinary circumstances that would warrant consideration of early parole.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3407, Jan. 16, 1979]

§ 2.16 Parole of prisoner in state, local, or territorial institution.

(a) Any person who is serving a sentence of imprisonment for any offense against the United States, but who is confined therefor in a state reformatory or other state or territorial institution, shall be eligible for parole by the Commission on the same terms and conditions, by the same authority, and subject to recommittal for the violation of such parole, as though he were confined in a Federal penitentiary, reformatory, or other correctional institution.

(b) Federal prisoners serving concurrent state and Federal sentences in state, local, or territorial institutions shall be furnished upon request parole application forms. Upon receipt of the application and any supplementary classification material submitted by the institution, parole consideration shall be made by an examiner panel of the appropriate region on the record only. If such prisoner is released from his state sentence prior to a Federal grant of parole, he shall be given a personal hearing as soon as feasible after receipt at a Federal institution.

(c) Prisoners who are serving Federal sentences exclusively but who are being boarded in State, local, or territorial institutions may be provided hearings at such facilities or may be transferred by the Bureau of Prisons to Federal Institutions for hearings by examiner panels of the Commission.

(d) Federal Youth Corrections Act offenders who are committed under 18 U.S.C. 3401 and who are given commitments of six months or less, shall be given parole consideration on the record only.

(18 U.S.C. 4203, 4204)

[42 FR 39809, Aug. 5, 1977, as amended at 45 FR 44924, July 2, 1980]

§ 2.17 Original jurisdiction cases.

(a) Following any hearing conducted pursuant to these rules, a Regional Commissioner may designate certain cases for decision by a quorum of Commissioners as described below, as original jurisdiction cases. In such instances, he shall forward the case with his vote, and any additional comments he may deem germane, to the National Commissioners for decision. Decisions shall be based upon the concurrence of three votes with the appropriate Regional Commissioner and each National Commissioner having one vote. Additional votes, if required, shall be cast by the other Regional Commissioners on a rotating basis as established by the Chairman of the Commission.

(b) The following criteria will be used in designating cases as original jurisdiction cases:

(1) Prisoners who have committed serious crimes against the security of the Nation, e.g., espionage or aggravated subversive activity.

(2) Prisoners whose offense behavior: (i) Involved an unusual degree of sophistication or planning, or (ii) was part of a large scale criminal conspiracy or a continuing criminal enterprise.

(3) Prisoners who have received national or unusual attention because of the nature of the crime, arrest, trial, or prisoner status, or because of the community status of the offender or his victim.

(4) *Long-term sentences.* Prisoners sentenced to a maximum term of forty-five years (or more) or prisoners serving life sentences.

(c) (1) Any case designated for the original jurisdiction of the Commission shall remain an original jurisdiction case unless designation is removed pursuant to this subsection.

(2) A case found to be inappropriately designated for the Commission's original jurisdiction, or to no longer warrant such designation, may be removed from original jurisdiction under the procedures specified in paragraph (a) of this section following a regularly scheduled hearing or the reopening of the case pursuant to § 2.28. Removal from original jurisdiction may also occur by majority vote of the Commission considering an appeal pursuant to § 2.27. Where the circumstances warrant, a case may be redesignated as original jurisdiction pursuant to the provisions of paragraphs (a) and (b) of this section.

[42 FR 39809, Aug. 5, 1977, as amended at 42 FR 44234, Sept. 2, 1977; 45 FR 33604, May 20, 1980]

§ 2.18 Granting of parole.

The granting of parole to an eligible prisoner rests in the discretion of the United States Parole Commission. As prerequisites to a grant of parole, the Commission must determine that the prisoner has substantially observed the rules of the institution or institutions in which he has been confined; and upon consideration of the nature and circumstances of the offense and the history and characteristics of the prisoner, must determine that release would not depreciate the seriousness of his offense or promote disrespect for the law, and that release would not jeopardize the public welfare (i.e., that there is a reasonable probability that, if released, the prisoner would live and remain at liberty without violating the law or the conditions of his parole).

§ 2.19 Information considered.

(a) In making a determination under this chapter (relating to release on parole) the Commission shall consider, if available and relevant:

(1) Reports and recommendations which the staff of the facility in which such prisoner is confined may make;

(2) Official reports of the prisoner's prior criminal record, including a report or record of earlier probation and parole experiences;

(3) Pre-sentence investigation reports;

(4) Recommendations regarding the prisoner's parole made at the time of sentencing by the sentencing judge and prosecuting attorney; and

(5) Reports of physical, mental, or psychiatric examination of the offender.

(b) There shall also be taken into consideration such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available (18 U.S.C. 4207). The Commission encourages the submission of relevant information concerning an eligible prisoner by interested persons.

(c) The Commission may take into account any substantial information available to it in establishing the prisoner's offense severity rating, salient factor score, and any aggravating or mitigating circumstances, provided the prisoner is apprised of the information and afforded an opportunity to respond. If the prisoner disputes the accuracy of the information presented, the Commission shall resolve such dispute by the preponderance of the evidence standard; that is, the Commission shall rely upon such information only to the extent that it represents the explanation of the facts that best accords with reason and probability. However, the Commission shall not consider in any determination, charges upon which a prisoner was found not guilty after trial unless reliable information is presented that was not introduced into evidence at such trial (e.g., a subsequent admission or other clear indication of guilt).

(d) Recommendations and information from sentencing judges, defense attorneys, prosecutors, and other interested parties are welcomed by the Commission. In evaluating a recommendation concerning parole, the Commission must consider the degree to which such recommendation provides the Commission with specific facts and reasoning relevant to the statutory criteria for parole (18 U.S.C. 4206) and the application of the Commission's guidelines (including reasons for departure therefrom). Thus, to be most helpful, a recommendation should state its underlying factual basis and reasoning. However, no recommendation (including a prosecutorial recommendation pursuant to a plea agreement) may be considered as binding upon the Commission's discretionary authority to grant or deny parole.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 26550, May 4, 1979; 44 FR 27658, May 11, 1979; 44 FR 31638, June 1, 1979]

§ 2.20 Paroling policy guidelines: Statement of general policy.

(a) To establish a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decision-making without removing individual case consideration, the United States Parole Commission has adopted guidelines for parole release consideration.

(b) These guidelines indicate the customary range of time to be served before release for various combinations of offense (severity) and offender (parole prognosis) characteristics. The time ranges specified by the guidelines are established specifically for cases with good institutional adjustment and program progress.

(c) These time ranges are merely guidelines. Where the circumstances warrant, decisions outside of the guidelines (either above or below) may be rendered.

(d) The guidelines contain examples of offense behaviors for each severity level. However, especially mitigating or aggravating circumstances in a particular case may justify a decision or a severity rating different from that listed.

(e) An evaluation sheet containing a "salient factor score" serves as an aid in determining the parole prognosis (potential risk of parole violation). However, where circumstances warrant, clinical evaluation of risk may override this predictive aid.

(f) Guidelines for reparole consideration are set forth at § 2.21.

(g) The Commission shall review the guidelines, including the salient factor score, periodically and may revise or modify them at any time as deemed appropriate.

(h) (1) The Adult Guidelines shall apply to all offenders except as specified in paragraph (h)(2) of this section.

(2) The Youth/NARA Guidelines will apply to any offender sentenced under the Youth Corrections Act, the Narcotic Rehabilitation Act, or the Juvenile Justice Act, and to any other offender who was less than 22 years of age at the time the current offense was committed, regardless of sentence type. If an offender was less than 18 years of age at the time of the current offense, such youthfulness shall, in itself, be considered as a mitigating factor.

(i) For criminal behavior committed while in confinement see § 2.36 (Rescission guidelines).

GUIDELINES FOR DECISION-MAKING

[Guidelines for Decision-Making, Customary Total Time to be Served before Release (including jail time)]

OFFENSE CHARACTERISTICS: Severity of Offense Behavior (Examples)	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score 1981)			
	Very Good (10 - 8)	Good (7 - 6)	Fair (5 - 4)	Poor (3 - 0)
LOW Alcohol or Cigarette law violations, including tax evasion (amount of tax evaded less than $2,000)1/ Gambling law violations (no managerial or proprietary interest) Illicit drugs, simple possession Marihuana/hashish, possession with intent to distribute/sale [very small scale (e.g., less than 10 lbs. of marihuana/less than 1 lb. of hashish/less than .01 liter of hash oil)] Property offenses (theft, income tax evasion, or simple possession of stolen property) less than $2,000	ADULT RANGE			
	<=6 months	6-9 months	9-12 months	12-16 months
	(YOUTH RANGE)			
	(<=6) months	(6-9) months	(9-12) months	(12-16) months
LOW MODERATE Counterfeit currency or other medium of exchange [(passing/possession) less than $2,000] Drugs (other than specifically categorized), possession with intent to distribute/sale [very small scale (e.g., less than 200 doses)] Marihuana/hashish, possession with intent to distribute/sale [small scale (e.g., 10-49 lbs. of marihuana / 1-4.9 lbs. of hashish / .01-.04 liters of hash oil)] Cocaine, possession with intent to distribute/sale [very small scale (e.g., less than 1 gram of 100% purity, or equivalent amount)] Gambling law violations - managerial or proprietary interest in small scale operation [e.g., Sports books (estimated daily gross less than $5,000); Horse books (estimated daily gross less than $1,500); Numbers bankers (estimated daily gross less than $750)] Immigration law violations Property offenses (forgery/fraud/theft from mail/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property with intent to resell) less than $2,000	ADULT RANGE			
	<=8 months	8-12 months	12-16 months	16-22 months
	(YOUTH RANGE)			
	(<=8) months	(8-12) months	(12-16) months	(16-20) months
MODERATE Automobile theft (3 cars or less involved and total value does not exceed $19,999)2/ Counterfeit currency or other medium of exchange [(passing/possession) $2,000 - $19,999] Drugs (other than specifically categorized), possession with intent to distribute/sale [small scale (e.g., 200-999 doses)] Marihuana/hashish, possession with intent to distribute/sale [medium scale (e.g., 50-199 lbs. of marihuana / 5-19.9 lbs. of hashish / .05-.19 liters of hash oil)]	ADULT RANGE			
	10-14 months	14-18 months	18-24 months	24-32 months
	(YOUTH RANGE)			
	(8-12) months	(12-16) months	(16-20) months	(20-26) months

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	Very Good (10 - 8)	Good (7 - 6)	Fair (5 - 4)	Poor (3 - 0)
MODERATE (continued) Cocaine, possession with intent to distribute/sale [small scale (e.g., 1.0-4.9 grams of 100% purity, or equivalent amount)] Opiates, possession with intent to distribute/sale [evidence of opiate addiction and very small scale (e.g., less than 1.0 grams of 100% pure heroin, or equivalent amount)] Firearms Act, possession/purchase/sale (single weapon: not sawed-off shotgun or machine gun) Gambling law violations - managerial or proprietary interest in medium scale operation [e.g., Sports books (estimated daily gross $5,000-$15,000); Horse books (estimated daily gross $1,500-$4,000); Numbers bankers (estimated daily gross $750-$2,000)] Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) $2,000-$19,999 Smuggling/transporting of alien(s)				
ADULT RANGE	10-14 months	14-18 months	18-24 months	24-32 months
(YOUTH RANGE)	(8-12) months	(12-16) months	(16-20) months	(20-26) months
HIGH Carnal Knowledge[3] Counterfeit currency or other medium of exchange [(passing/possession) $20,000 - $100,000] Counterfeiting [manufacturing (amount of counterfeit currency or other medium of exchange involved not exceeding $100,000)] Drugs (other than specifically listed), possession with intent to distribute/sale [medium scale (e.g., 1,000-19,999 doses)] Marihuana/hashish, possession with intent to distribute/sale [large scale (e.g., 200-1,999 lbs. of marihuana / 20-199 lbs. of hashish / .20-1.99 liters of hash oil)] Cocaine, possession with intent to distribute/sale [medium scale (e.g., 5-99 grams of 100% purity, or equivalent amount)] Opiates, possession with intent to distribute/sale [small scale (e.g., less than 5 grams of 100% pure heroin, or equivalent amount) except as described in moderate] Firearms Act, possession/purchase/sale (sawed-off shotgun(s), machine gun(s), or multiple weapons) Gambling law violations - managerial or proprietary interest in large scale operation (e.g., Sports books (estimated daily gross more than $15,000); Horse books (estimated daily gross more than $4,000); Numbers bankers (estimated daily gross more than $2,000)] Involuntary manslaughter (e.g., negligent homicide)				
ADULT RANGE	14-20 months	20-26 months	26-34 months	34-44 months
(YOUTH RANGE)	(12-16) months	(16-20) months	(20-26) months	(26-32) months

BEST DOCUMENT AVAILABLE

	Very Good (10 - 8)	Good (7 - 6)	Fair (5 - 4)	Poor (3 - 0)
HIGH (continued)				
Mann Act (no force - commercial purposes) Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) $20,000 - $100,000 Threatening communications (e.g., mail/phone) - not for purposes of extortion and no other overt act				
ADULT RANGE	14-20 months	20-26 months	26-34 months	34-44 months
(YOUTH RANGE)	(12-16) months	(16-20) months	(20-26) months	(26-32) months
VERY HIGH				
Robbery (1 or 2 instances) Breaking and entering - armory with intent to steal weapons Breaking and entering/burglary - residence; or breaking and entering of other premises with hostile confrontation with victim Counterfeit currency or other medium of exchange [(passing/possession/manufacturing) / amount more than $100,000 but not exceeding $500,000] Drugs (other than specifically listed), possession with intent to distribute/sale [large scale (e.g., 20,000 or more doses) except as described in Greatest I] Marihuana/hashish, possession with intent to distribute/sale [very large scale (e.g., 2,000 lbs. or more of marihuana / 200 lbs. or more of hashish / 2 liters or more of hash oil)] Cocaine, possession with intent to distribute/sale [large scale (e.g., 100 grams or more of 100% purity, or equivalent amount) except as described in Greatest I] Opiates, possession with intent to distribute/sale [medium to a very large scale (e.g., 5 grams or more of 100% pure heroin, or equivalent amount) unless the offense is described in Greatest I or Greatest II] Extortion [threat of physical harm (to person or property)] Explosives, possession/transportation Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) more than $100,000 but not exceeding $500,000				
ADULT RANGE	24-36 months	36-48 months	48-60 months	60-72 months
(YOUTH RANGE)	(20-26) months	(26-32) months	(32-40) months	(40-48) months
GREATEST I				
Aggravated felony (e.g., robbery: weapon fired or injury of a type normally requiring medical attention) Arson or explosive detonation [involving potential risk of physical injury to person(s) (e.g., premises occupied or likely to be occupied) - no serious injury occurred]				
ADULT RANGE	40-52 months	52-64 months	64-78 months	78-100 months
(YOUTH RANGE)	(30-40) months	(40-50) months	(50-60) months	(60-76) months

BEST DOCUMENT AVAILABLE

	Very Good (10 - 8)	Good (7 - 6)	Fair (5 - 4)	Poor (3 - 0)
GREATEST I (continued)				
Drugs (other than specifically listed), possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 200,000 doses)] Cocaine, possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 1 kilogram of 100% purity, or equivalent amount)] Opiates, possession with intent to distribute/sale [managerial or proprietary interest and large scale (e.g., offense involving more than 50 grams but not more than 1 kilogram (1000 grams) of 100% pure heroin or equivalent amount)] Kidnaping [other than listed in Greatest II; limited duration; and no harm to victim (e.g., kidnaping the driver of a truck during a hijacking, driving to a secluded location, and releasing victim unharmed)] Robbery (3 or 4 instances) Sex act- force (e.g., forcible rape or Mann Act (force)]	ADULT RANGE			
	40-52 months	52-64 months	64-78 months	78-100 months
	(YOUTH RANGE)			
	(30-40) months	(40-50) months	(50-60) months	(60-76) months
GREATEST II				
Murder Voluntary manslaughter Aggravated felony - serious injury (e.g., robbery: injury involving substantial risk of death or protracted disability, or disfigurement) or extreme cruelty/brutality toward victim Aircraft hijacking Espionage Kidnapping (for ransom or terrorism; as hostage; or harm to victim) Treason Opiates, possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 1 kilogram (1000 grams) of 100% pure heroin or equivalent amount)]	ADULT RANGE			
	52+ months	64+ months	78+ months	100+ months
	(YOUTH RANGE)			
	(40+) months	(50+) months	(60+) months	(76+) months
	Specific upper limits are not provided due to the limited number of cases and the extreme variation possible within category.			

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GENERAL NOTES

A. These guidelines are predicated upon good institutional conduct and program performance.

B. If an offense behavior is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed.

C. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.

D. If an offense behavior involved multiple separate offenses, the severity level may be increased.

E. In cases where multiple sentences have been imposed (whether consecutive or concurrent, and whether aggregated or not) an offense severity rating shall be established to reflect the overall severity of the underlying criminal behavior. This rating shall apply whether or not any of the component sentences has expired.

OTHER OFFENSES

(1) Conspiracy shall be rated for guideline purposes according to the underlying offense behavior if such behavior was consummated. If the offense is unconsummated, the conspiracy will be rated one step below the consummated offense. A consummated offense includes one in which the offender is prevented from completion only because of the intervention of law enforcement officials.

(2) Breaking and entering not specifically listed above shall normally be treated as a low moderate severity offense; however, if the monetary loss amounts to $2,000 or more, the applicable property offense category shall be used. Similarly, if the monetary loss involved in a burglary or breaking and entering (that is listed) constitutes a more serious property offense than the burglary or breaking and entering itself, the appropriate property offense category shall be used.

(3) Manufacturing of synthetic drugs for sale shall be rated as not less than very high severity.

(4) Bribery of a public official (offering/accepting/soliciting) or extortion (use of official position) shall be rated as no less than moderate severity for those instances limited in scope (e.g., single instance and amount of bribe/demand less than $20,000 in value); and shall be rated as no less than high severity in any other case. In the case of a bribe/demand with a value in excess of $100,000, the applicable property offense category shall apply. The extent to which the criminal conduct involves a breach of the public trust, therefore causing injury beyond that describable by monetary gain, shall be considered as an aggravating factor.

(5) Obstructing justice (no physical threat)/perjury (in a criminal proceeding) shall be rated in the category of the underlying offense concerned, except that obstructing justice (threat of physical harm) shall be rated as no less than very high severity.

(6) Misprison of felony shall be rated as moderate severity if the underlying offense is high severity or above. If the underlying offense is moderate severity or less, it shall be rated as low severity.

(7) Harboring a fugitive shall be rated as moderate severity if the underlying offense is high severity or above. If the underlying offense is moderate severity or less, it shall be rated as low severity.

REFERENCED NOTES

1. Alcohol or cigarette tax law violations involving $2,000 or more of evaded tax shall be treated as a property offense (tax evasion).

2. Except that automobile theft (not kept more than 72 hours; no substantial damage; and not theft for resale) shall be rated as low severity. Automobile theft involving a value of more than $19,999 shall be treated as a property offense. In addition, automobile theft involving more than 3 cars, regardless of value, shall be treated as no less than high severity.

3. Except that carnal knowledge in which the relationship is clearly voluntary, the victim is not less than 14 years old, and the age difference between offender and victim is less than four years shall be rated as a low severity offense.

DEFINITIONS

a. "Other media of exchange" include, but are not limited to, postage stamps, money orders, or coupons redeemable for cash or goods.

b. "Drugs, other than specifically categorized" include, but are not limited to, the following, listed in ascending order of their perceived severity: amphetamines, hallucinogens, barbiturates, methamphetamines, phencyclidine (PCP). This ordering shall be used as a guide to decision placement within the applicable guideline range (i.e., other aspects being equal, amphetamines will normally be rated toward the bottom of the guideline range and PCP will normally be rated toward the top).

c. "Equivalent amounts" for the cocaine and opiate categories may be computed as follows: 1 gm. of 100% pure is equivalent to 2 gms. of 50% pure and 10 gms. of 10% pure, etc.

d. The "opiate" category includes heroin, morphine, opiate derivatives, and synthethic opiate substitutes.

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e. Managerial/proprietary interest in large scale drug cases is defined to include offenders who sell or negotiate to sell such drugs; or who have decision-making authority concerning the distribution/sale, importation, cutting, or manufacture of such drugs; or who finance such operations. Cases to be excluded are peripherally involved offenders without any decision-making authority (e.g., a person hired merely as a courier).

SALIENT FACTOR SCORE

Name————

Register Number————

Item A: Prior conviction(s)/adjudications (adult or juvenile). ☐
- None .... =3
- One .... =2
- Two or Three .... =1
- Four or More .... =0

Item B: Prior commitment(s) of more than 30 days (adult or juvenile). ☐
- None .... =2
- One or Two .... =1
- Three or More .... =0

Item C: Age at Current Offense/Prior Commitments. ☐
- Age at commencement of the current offense:
  - 26 years of age or more. =2***
  - 20-25 years of age .... =1***
  - 19 years of age or less .... =0

***Exception: If five or more prior commitments of more than thirty days (adult or juvenile), place an 'x' here — - and score this item 0

Item D: Recent commitment free period (three years). ☐
- No prior commitment of more than thirty days (adult or juvenile) or released to the community from last such commitment at least three years prior to the commencement of the current offense. =1
- Otherwise .... =0

Item E: Probation/parole/confinement/escape status violator this time. ☐
- Neither on probation, parole, confinement, or escape status at the time of the current offense, nor committed as a probation, parole, confinement, or escape status violator this time. =1
- Otherwise .... =0

Item F: Heroin/opiate dependence. ☐
- No history of heroin/opiate dependence. =1
- Otherwise .... =0

Total score .... ☐

NOTE: For purposes of the Salient Factor Score, an instance of criminal behavior resulting in a judicial determination of guilt or an admission of guilt before a judicial body shall be treated as a conviction, even if a conviction is not formally entered.

[44 FR 26542, May 4, 1979, as amended at 45 FR 6379, Jan. 28, 1980; 45 FR 44925, July 2, 1980; 45 FR 59871, Sept. 11, 1980; 46 FR 35638, July 10, 1981; 46 FR 41494, Aug. 17, 1981; 47 FR 25735, June 15, 1982]

§ 2.21 Reparole consideration guidelines.

(a) If revocation is based upon administrative violation(s) only [i.e., violations other than new criminal conduct] the following guidelines shall apply.

Positive Supervision History (Examples)	Customary time to be served before rerelease
a. No serious alcohol/drug abuse and no possession of weapon(s) [and]. b. At least 8 months from date of release to date of violation behavior [and]. c. Present violation represents first instance of failure to comply with parole regulations of this term.	< 6 months.
Negative Supervision History (Examples) a. Serious alcohol/drug abuse (e.g., readdiction to opiates) or possession of weapon(s) [or]. b. Less than 8 months from date of release to date of violation behavior [or]. c. Repetitious or persistent violations	6 to 9 months.

(b)(1) If a finding is made that the prisoner has engaged in behavior constituting new criminal conduct, the appropriate severity rating for the new criminal behavior shall be calculated. New criminal conduct may be determined either by a new federal, state, or local conviction or by an independent finding by the Commission at revocation hearing. As violations may be for state or local offenses, the appropriate severity level may be determined by analogy with listed federal offense behaviors.

(2) The guidelines for parole consideration specified at 28 CFR 2.20 shall

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then be applied. The original guideline type (e.g., adult, youth) shall determine the applicable guidelines for the parole violator term, except that a violator committed with a new federal sentence of more than one year shall be treated under the guideline type applicable to the new sentence.

(3) Time served on a new state or federal sentence shall be counted as time in custody for reparole guideline purposes. This does not affect the computation of the expiration date of the violator term as provided by §§ 2.47(d) and 2.52 (c) and (d).

(c) The above are merely guidelines. A decision outside these guidelines (either above or below) may be made when circumstances warrant. For example, violations of an assaultive nature or by a person with a history of repeated parole failure may warrant a decision above the guidelines. Minor offense(s) (e.g., minor traffic offenses, vagrancy, public intoxication) shall normally be treated under administrative violations.

[44 FR 26548, May 4, 1979; 44 FR 27391, May 10, 1979; 44 FR 31638, June 1, 1979, as amended at 47 FR 25736, June 15, 1982]

§ 2.22 Communication with the Commission.

Attorneys, relatives, or interested parties wishing a personal interview to discuss a specific case with a representative of the Commission must submit a written request to the appropriate office setting forth the nature of the information to be discussed. Such interview may be conducted by a Commissioner or assigned staff, and a written summary of each such interview shall be prepared and placed in the prisoner's file.

[43 FR 22707, May 28, 1978]

§ 2.23 Delegation to hearing examiners.

(a) There is hereby delegated to hearing examiners the authority necessary to conduct hearings and make recommendations relative to the grant or denial of parole or reparole, revocation or reinstatement of parole or mandatory release, and conditions of parole. Hearings shall be conducted by a panel of two hearing examiners, except where specifically provided that a hearing may be conducted by a single hearing examiner or other official designated by the Regional Commissioner.

(b) The concurrence of two examiners shall be required for a panel recommendation. If a hearing is conducted by a single examiner (or other official), the case shall be reviewed on the record by an additional examiner or examiners for the required vote or votes.

(c) A panel recommendation requires two concurring examiner votes. In the event an examiner panel cannot agree upon a recommendation, the administrative hearing examiner shall vote. If the administrative hearing examiner does not concur with either member of the panel, the case shall be referred to any available hearing examiner for a further vote until a recommendation is reached. If the administrative hearing examiner is serving as a member of a hearing examiner panel or is otherwise unavailable, cases requiring his action under this paragraph will be referred to another hearing examiner.

(d) A recommendation of a hearing examiner panel shall become an effective Commission decision only upon the Regional Commissioner's approval, and docketing at the regional office.

[44 FR 3408, Jan. 16, 1979, as amended at 45 FR 84052, Dec. 12, 1980]

§ 2.24 Review of panel recommendation by the Regional Commissioner.

(a) A Regional Commissioner may review the recommendation of any examiner panel and refer this recommendation, prior to written notification to the prisoner, with his recommendation and vote to the National Commissioners for consideration and any action deemed appropriate. Written notice of this referral action shall be mailed or transmitted to the prisoner within twenty-one days of the date of the hearing. The Regional Commissioner and each National Commissioner shall have one vote and decisions shall be based upon the concurrence of two votes. Action shall be taken by the National Commissioners within thirty days of the date of referral action by the Regional Commissioner, except in emergencies.

(b) Notwithstanding the provisions of paragraph (a) of this section, a Regional Commissioner may:

(1) On his own motion modify or reverse the recommendation of a hearing examiner panel that is outside the guidelines to bring the decision closer to (or to) the nearer limit of the appropriate guideline range; or

(2) On his own motion, modify the recommendation of a hearing examiner panel to bring the decision to a date not to exceed six months from the date recommended by the examiner panel;

(3) Return the case to the institution for a rehearing, provided that a notice of action is sent to the prisoner specifying the purpose of the rehearing;

(4) Designate the case for the original jurisdiction of the Commission pursuant to § 2.17.

[42 FR 39809, Aug. 5, 1977, as amended at 45 FR 84053, Dec. 22, 1980; 46 FR 35639, July 10, 1981]

§ 2.25 Regional appeal.

(a) A prisoner or parolee may submit to the responsible Regional Commissioner a written appeal of any decision to grant (other than a decision to grant parole on the date of parole eligibility), rescind, deny, or revoke parole, except that any appeal of a Commission decision pursuant to § 2.17 shall be pursuant to § 2.27. This appeal must be filed on a form provided for that purpose within thirty days from the date of entry of such decision.

(b) The Regional Commissioner may affirm the decision, order a new institutional hearing on the next docket, order a regional appellate hearing, or reverse or modify the decision. The following actions, whether based on the record or following a regional appellate hearing, require the concurrence of two out of three Regional Commissioners:

(1) Any modification resulting in a reduction of more than 180 days (other than a modification that brings a decision from above the appropriate guideline range closer to, or to, the nearer limit of the appropriate guideline range);

(2) Any modification resulting in a decision below the appropriate guideline range;

(3) Reversal of a decision (i.e., any modification of a ten-year reconsideration hearing decision to a presumptive or effective parole date).

Decisions requiring a second or additional vote shall be referred to other Regional Commissioners on a rotating basis as established by the Chairman.

(c) Regional appellate hearings may be held at the regional office before the Regional Commissioner. If a regional appellate hearing is ordered, attorneys, relatives and other interested parties who wish to appear must submit a written request to the Regional Commissioner stating their relationship to the prisoner and the general nature of the information they wish to present. The Regional Commissioner shall determine if the requested appearances will be permitted. The prisoner shall not appear personally.

(d) Within 30 days of receipt of the appeal, except in emergencies, the Regional Commissioner shall inform the applicant in writing of the decision and the reasons therefor.

(e) If no appeal is filed within thirty days of the date of the entry of the original decision, such decision shall stand as the final decision of the Commission.

(f) Appeals under this section may be based on the following grounds:

(1) That the guidelines were incorrectly applied as to any or all of the following:

(i) Severity rating;

(ii) Salient factor score;

(iii) Time in custody;

(2) That a decision outside the guidelines was not supported by the reasons or facts as stated;

(3) That especially mitigating circumstances (for example, facts relating to the severity of the offense or the prisoner's probability of success on parole) justify a different decision;

(4) That a decision was based on erroneous information, and the actual facts justify a different decision;

(5) That the Commission did not follow correct procedure in deciding the case, and a different decision would have resulted if the error had not occurred;

(6) There was significant information in existence but not known at the time of the hearing;

(7) There are compelling reasons why a more lenient decision should be rendered on grounds of compassion.

[42 FR 39809, Aug. 5, 1977, as amended at 46 FR 35639, July 10, 1981; 46 FR 42842, Aug. 25, 1981]

§ 2.26 Appeal to National Appeals Board.

(a) Within 30 days of entry of a Regional Commissioner's decision under § 2.25, a prisoner or parolee may appeal to the National Appeals Board on a form provided for that purpose. However, any matter not raised on a regional level appeal may not be raised on appeal to the National Appeals Board. The National Appeals Board may, upon the concurrence of two members, affirm, modify, or reverse the decision, or order a rehearing at the institutional or regional level, except that a modification or reversal resulting in a decision below the guidelines shall require the concurrence of three members. Split decisions requiring additional votes shall be referred to the Chairman, and, if necessary, to other Regional Commissioners on a rotating basis as established by the Chairman.

(b) The National Appeals Board shall act within 60 days of receipt of the appellant's papers, to affirm, modify, or reverse the decision.

(c) Decisions of the National Appeals Board shall be final.

[45 FR 6380, Jan. 28, 1980]

§ 2.27 Appeal of original jurisdiction cases.

(a) Cases decided under the procedure specified in § 2.17 may be appealed within thirty days of the date of the decision on a form provided for this purpose. Appeals will be reviewed at the next regularly scheduled meeting of the Commission provided they are received thirty days in advance of such meeting. Appeals received in the office of the Commission's National Appeals Board in Chevy Chase, Maryland, less than thirty days in advance of a regularly scheduled meeting will be reviewed at the next regularly scheduled meeting thereafter. A quorum of five Commissioners shall be required and decisions shall be by majority vote. In the case of a tie vote, the previous decision shall stand. This appellate decision shall be final.

(b) Attorneys, relatives, and other interested parties who wish to submit written information in support of a prisoner's appeal should send such information to the National Appeals Board Analyst, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815-7286. Supporting material should be submitted at least 2 weeks in advance of the meeting at which the appeal will be heard, in order to permit consideration thereof by the Commission.

(c) Attorneys, relatives, or other interested parties who wish to speak for or against parole at such consideration must submit a written request to the Chairman of the Commission stating their relationship to the prisoner and the general nature of the material they wish to present. The Chairman shall determine if the requested appearances will be permitted.

(d) If no appeal is filed within 30 days of the entry of the decision under § 2.17 that decision shall stand as the final decision of the Commission.

[43 FR 38821, Aug. 31, 1978, as amended at 44 FR 3409, Jan. 16, 1979; 46 FR 52354, Oct. 27, 1981]

§ 2.28 Reopening of cases.

(a) *Favorable information.* Notwithstanding the appeal procedures of § § 2.25 and 2.26, the appropriate Regional Commissioner may, on his own motion, reopen a case at any time upon the receipt of new information of substantial significance favorable to the prisoner and may then take any action authorized under the provisions and procedures of § 2.25. Original jurisdiction cases may be reopened upon the motion of the appropriate Regional Commissioner under the procedures of § 2.17.

(b) *Institutional misconduct.* Consideration of disciplinary infractions and allegations of new criminal conduct occurring after the setting of a parole date are subject to the provisions of § 2.14 (in the case of a prisoner with a presumptive date) and § 2.34 (in the case of a prisoner with an effective date of parole).

(c) *Additional sentences.* If a prisoner receives an additional concurrent or consecutive federal sentence following his initial parole consideration, the Regional Commissioner shall reopen his case for a new initial hearing on the next regularly scheduled docket to consider the additional sentence and reevaluate the case. Such action shall void the previous presumptive or effective release date. However, a new initial hearing is not mandatory where the Commission has previously evaluated the new criminal behavior, which led to the additional federal sentence, at a rescission hearing under 28 CFR 2.34; except where the new sentence extends the mandatory release date for a prisoner previously continued to the expiration of his sentence.

(d) *Conviction after revocation.* Upon receipt of information subsequent to the revocation hearing that a prisoner whose parole has been revoked has sustained a new conviction for conduct while on parole, the Regional Commissioner may reopen the case pursuant to § 2.52(c)(2) for a special reconsideration hearing on the next regularly scheduled docket to consider forfeiture of time spent on parole and such further action as may be appropriate. The entry of a new order shall void any presumptive or effective release date previously established.

(e) *Release planning.* When an effective date of parole has been set by the Commission, release on that date shall be conditioned upon the completion of a satisfactory plan for parole supervision. The appropriate Regional Commissioner may on his own motion reconsider any case prior to release and may reopen and advance or retard an effective parole date for purposes of release planning. Retardation without a hearing may not exceed 120 days.

(f) *New adverse information.* Upon receipt of new and significant adverse information that is not covered by paragraphs (a) through (e) of this section, the Regional Commissioner may refer the case to the National Commissioners with his recommendation and vote to schedule the case for a special reconsideration hearing. Such referral by the Regional Commissioner shall automatically retard the prisoner's scheduled release date until a final decision is reached in the case. The decision to schedule a case for a special reconsideration hearing shall be based on the concurrence of three out of five votes, and the hearing shall be conducted in accordance with the procedures set forth in §§ 2.12 and 2.13. The entry of a new order following such hearing shall void the previously established release date.

[44 FR 3406, Jan. 16, 1979, as amended at 45 FR 84053, Dec. 22, 1980; 46 FR 36138, July 14, 1981]

§ 2.29 Release on parole.

(a) A grant of parole shall not be deemed to be operative until a certificate of parole has been delivered to the prisoner.

(b) An effective date of parole shall not be set for a date more than six months from the date of the hearing. Residence in a Community Treatment Center as part of a parole release plan generally shall not exceed one hundred and twenty days.

(c) When an effective date of parole falls on a Saturday, Sunday, or legal holiday, the Warden of the appropriate institution shall be authorized to release the prisoner on the first working day preceding such date.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3407, Jan. 16, 1979]

§ 2.30 False or withheld information.

All paroles are ordered on the assumption that information from the prisoner has not been fraudulently given or withheld from the Commission. If evidence comes to the attention of the Commission that a prisoner willfully concealed or misrepresented information deemed significant, the Regional Commissioner may reopen the case pursuant to § 2.28(f) for a hearing to determine whether such parole should be voided. Such action may be taken whether or not the prisoner has actually been released on parole. If such prisoner has been released on parole, the Commission or a member thereof may issue a summons or warrant for such prisoner.

[44 FR 3407, Jan 16, 1979]

§ 2.31 Parole to detainers: Statement of policy.

(a) Where a detainer is lodged against a prisoner, the Commission may grant parole if the prisoner in other respects meets the criteria set forth in § 2.18. The presence of a detainer is not in itself a valid reason for the denial of parole.

(b) The Commission will cooperate in working out arrangements for concurrent supervision with other jurisdictions where it is feasible and where release on parole appears to be justified.

§ 2.32 Parole to local or immigration detainers.

(a) When a State or local detainer is outstanding against a prisoner whom the Commission wishes to parole, the Commission may order either of the following:

(1) Parole to the actual physical custody of the detaining authorities only. In this event, release is not to be effected except to the detainer. When such a detainer is withdrawn, the prisoner is not to be released unless and until the Commission makes a new order of parole.

(2) Parole to the actual physical custody of the detaining authorities or an approved plan. In this event, release is to be effected regardless of whether the detaining officials take the prisoner into custody, providing there is an acceptable plan for community supervision.

(b) When the Commission wishes to parole a prisoner subject to a detainer filed by Federal immigration officials, the Commission shall order the following: Parole to the actual physical custody of the immigration authorities or an approved plan. In this event, release is to be effected regardless of whether immigration officials take the prisoner into custody, providing there is an acceptable plan for community supervision.

(c) As used in this section "parole to a detainer" means release to the "physical custody" of the authorities who have lodged the detainer. Temporary detention in a jail in the county where the institution of confinement is located does not constitute release on parole to such detainer. If the authorities who lodged the detainer do not take the prisoner into custody for any reason, he shall be returned to the institution to await further order of the Commission.

[43 FR 38822, Aug. 31, 1978, as amended at 44 FR 3409, Jan. 16, 1979; 44 FR 31637, June 1, 1979; 44 FR 34494, June 15, 1979]

§ 2.33 Release plans.

(a) A grant of parole is conditioned upon the approval of release plans by the Regional Commissioner. In general, the following factors are considered as elements in the prisoner's release plan:

(1) Availability of legitimate employment and an approved residence for the prospective parolee; and

(2) Availability of necessary aftercare for a parolee who is ill or who requires special care.

(b) Generally, parolees will be released only to the place of their legal residence unless the Commission is satisfied that another place of residence will serve the public interest more effectively or will improve the probability of the applicant's readjustment.

(c) Where the circumstances warrant, the Commission on its own motion, or upon recommendation of the probation officer, may require that an adviser who is a responsible, reputable, and law-abiding citizen living in or near the community in which the releasee will reside be available to the releasee. Such advisor shall serve under the direction of and in cooperation with the probation officer to whom the parolee is assigned.

[42 FR 39809, Aug. 5, 1977; 42 FR 44234, Sept. 2, 1977]

§ 2.34 Rescission of parole.

(a) When an effective date of parole has been set by the Commission, release on that date is conditioned upon continued satisfactory conduct by the prisoner. If a prisoner granted such a date has been found in violation of institution rules by an Institutional Disciplinary Committee or is alleged to have committed a new criminal act at any time prior to the delivery of the certificate of parole, the Regional Commissioner shall be advised promptly of such information. The prisoner shall not be released until the institution has been notified that no change has been made in the Commission's order to parole. Following receipt of such information, the Regional Commissioner may reopen the case and retard the parole date for up to 90 days without a hearing, or schedule a rescission hearing under this section on the next available docket at the institution or on the first docket following return to a federal institution from a community treatment center or a state or local halfway house.

(b) Upon the ordering of a rescission hearing under this section, the prisoner shall be afforded written notice specifying the information to be considered at the hearing. The notice shall further state that the purpose of the hearing will be to decide whether rescission of the parole date is warranted based on the charges listed on the notice, and shall advise the prisoner of the procedural rights described below.

(c) An Institutional Disciplinary Committee hearing resulting in a finding that the prisoner has committed a violation of disciplinary rules may be relied upon by the Commission as conclusive evidence of institutional misconduct. However, the prisoner will be afforded an opportunity to explain any mitigating circumstances, and to present documentary evidence in mitigation of the misconduct at the rescission hearing.

(d) In the case of allegations of new criminal conduct committed prior to delivery of the parole certificate, the Commission may consider documentary evidence and/or written testimony presented by the prisoner, arresting authorities, or other persons.

(e) The prisoner may be represented at a rescission hearing by a person of his choice. The function of the prisoner's representative shall be to offer a statement following the discussion of the charges with the prisoner, and to provide such additional information as the examiner panel may require. However, the presiding hearing examiner may limit or exclude any irrelevant or repetitious statement.

(f) The evidence upon which the rescission hearing is to be conducted shall be disclosed to the prisoner upon request, subject to the exemptions set forth at § 2.55. If the parole grant is rescinded, the Commission shall furnish to the prisoner a written statement of its findings and the evidence relied upon.

[44 FR 3406, Jan. 16, 1979, as amended at 45 FR 59871, Sept. 11, 1980; 47 FR 2313, Jan. 15, 1982]

§ 2.35 Mandatory release in the absence of parole.

(a) A prisoner shall be mandatorily released by operation of law at the end of the sentence imposed by the court less such good time deductions as he may have earned through his behavior and efforts at the institution of confinement. If released pursuant to 18 U.S.C. 4164, such prisoner shall be released, as if on parole, under supervision until the expiration of the maximum term or terms for which he was sentenced less 180 days. If released pursuant to 18 U.S.C. 4205(f), such prisoner shall remain under supervision until the expiration of the maximum term or terms for which he was sentenced. Insofar as possible, release plans shall be completed before the release of any such prisoner.

(b) A prisoner committed under the Youth Corrections Act must be initially released conditionally under supervision not later than two years before the expiration of the term imposed by the court.

[42 FR 39809, Aug. 5, 1977, as amended at 45 FR 59871, Sept. 11, 1980]

§ 2.36 Rescission guidelines.

(a) The following guidelines shall apply to the sanctioning of disciplinary infractions or new criminal behavior committed by a prisoner subsequent to the commencement of his sentence and prior to his release on parole. These guidelines specify the customary time to be served for such behavior which shall be added to the time required by the original presumptive or effective date. Credit shall be given towards service of these guidelines for any time spent in custody on a new offense that has not been credited towards service of the original presumptive or effective date. If a new concurrent or consecutive sentence is imposed for such behavior, these guidelines shall also be applied at the initial hearing on such term.

(1) *Administrative Rule Infraction(s)* (including drug/alcohol abuse) normally can be adequately sanctioned by postponing a presumptive or effective date by 0-60 days per instance of misconduct. Escape or other new criminal conduct shall be considered in accordance with the guidelines set forth below.

(2) *Escape/New Criminal Behavior in a Prison Facility* (including a Community Treatment Center). The time required pursuant to the guidelines set forth in paragraph (a)(2)(i) and (ii) of this section shall be added to the time required by the original presumptive or effective date.

(i) *Escape or Attempted Escape Without Force or Threat:*

(A) Non-Secure Facility or Program (absent less than 7 days): 3-6 months.

(B) Secure Facility (no force or threat used); or Non-Secure Facility or Program (absent 7 days or more): 6-12 months.

NOTES: (1) If other criminal conduct is committed during the escape or during time spent in escape status, then time to be served for the escape/attempted escape shall be added to that assessed for the other new criminal conduct.

(2) Time in escape status shall not be credited.

(ii) *Other New Criminal Behavior in a Prison Facility:*

[In months]

Severity rating of the new criminal behavior (from § 2.20)	Adult cases	Youth/ NARA cases
Low	<6	<6
Low moderate	<8	<8
Moderate	10-14	8-12
High	14-20	12-16
Very high	24-36	20-26
Greatest I	40-52	30-40
Greatest II	52+	40+

(3) *New Criminal Behavior in the Community* (e.g., while on pass, furlough, work release, or on escape). In such cases, the guidelines applicable to reparole violators under § 2.21 shall be applied, using the new offense severity (from § 2.20) and recalculated salient factor score (such score shall be recalculated as if the prisoner had been on parole at the time of the new criminal behavior). The time required pursuant to these guidelines shall be added to the time required by the original presumptive or effective date.

(b) The above are merely guidelines. Where the circumstances warrant, a decision outside the guidelines (above or below) may be rendered provided specific reasons are given. For example, a substantial period of good conduct since the last disciplinary infraction in cases not involving new criminal conduct may be treated as a mitigating circumstance.

[45 FR 59871, Sept. 11, 1980; 45 FR 62982, Sept. 23, 1980; 45 FR 66789, Oct. 8, 1980]

§ 2.37 Disclosure of information concerning parolees: statement of policy.

(a) Information concerning a parolee under the Commission's supervision may be disclosed to a person or persons who may be exposed to harm through contact with that particular parolee if such disclosure is deemed to be reasonably necessary to give notice that such danger exists.

(b) Information concerning parolees may be released to a law enforcement agency as required for the protection of the public or the enforcement of the conditions of parole.

[47 FR 13521, Mar. 31, 1982]

§ 2.38 Community supervision by United States Probation Officers.

(a) Pursuant to sections 3655 and 4203(b)(4) of Title 18 of the United States Code, United States Probation Officers shall provide such parole services as the Commission may request. In conformity with the foregoing, probation officers function as parole officers and provide supervision to persons released by parole or as if on parole (mandatory release) under the Commission's jurisdiction.

(b) A parolee may be transferred to a new district of supervision with the permission of the probation officers of both the transferring and receiving district, provided such transfer is not contrary to instructions from the Commission.

[44 FR 3409, Jan. 16, 1979]

§ 2.39 Jurisdiction of the Commission.

(a) Jurisdiction of the Commission over a parolee shall terminate no later than the date of expiration of the maximum term or terms for which he was sentenced, except as provided by § 2.35, § 2.43, or § 2.52.

(b) The parole of any parolee shall run concurrently with the period of parole or probation under any other Federal, State, or local sentence.

(c) The parole of any prisoner sentenced before June 29, 1932, shall be for the remainder of the term or terms specified in his sentence, less good time allowances provided by law.

(d) Upon the termination of jurisdiction, the Commission shall issue a certificate of discharge to such parolee and to such other agencies as it may determine.

§ 2.40 Conditions of release.

(a) The following conditions are attached to every grant of parole and are deemed necessary to provide adequate supervision and to protect the public welfare. They are printed on the certificates issued to each parolee and mandatory releasee:

(1) The parolee shall go directly to the district named in the certificate (unless released to the custody of other authorities). Within three days after his arrival, he shall report to his parole adviser, if he has one, and to the United States Probation Officer whose name appears on the certificate. If in any emergency the parolee is unable to get in touch with his parole adviser or his probation officer or his office, he shall communicate with the United States Parole Commission, Chevy Chase, Maryland 20815-7286.

(2) If the parolee is released to the custody of other authorities, and after release from the physical custody of such authorities, he is unable to report to the United States Probation Officer to whom he is assigned within three days, he shall report instead to the nearest United States Probation Officer.

(3) The parolee shall not leave the limits fixed by his certificate of parole without written permission from the probation officer.

(4) The parolee shall notify his probation officer within two days of any change in his place of residence.

(5) The parolee shall make a complete and truthful written report (on a form provided for that purpose) to his probation officer between the first and third day of each month, and on the final day of parole. He shall also report to his probation officer at other times as the probation officer directs.

(6) The parolee shall not violate any law, nor shall he associate with persons engaged in criminal activity. The parolee shall get in touch within two days with his probation officer or office if he is arrested or questioned by a law-enforcement officer.

(7) The parolee shall not enter into any agreement to act as an informer or special agent for any law-enforcement agency.

(8) The parolee shall work regularly unless excused by his probation officer, and support his legal dependents, if any, to the best of his ability. He shall report within two days to his probation officer any changes in employment.

(9) The parolee shall not drink alcoholic beverages to excess. He shall not purchase, possess, use, or administer marihuana or narcotic or other habit-forming drugs, unless prescribed or advised by a physician. The parolee shall not frequent places where such drugs are illegally sold, dispensed, used, or given away.

(10) The parolee shall not associate with persons who have a criminal record unless he has permission of his probation officer.

(11) The parolee shall not have firearms (or other dangerous weapons) in his possession without the written permission of his Probation Officer, following prior approval of the United States Parole Commission.

NOTE: Such permission may not be considered in cases in which the parolee is prohibited from such possession by any federal, state, or local law.

(b) The Commission or a member thereof may at any time modify or add to the conditions of release pursuant to this section, on its own motion or on the request of the United States Probation Officer supervising the parolee. The parolee shall receive notice of the proposed modification and unless waived shall have ten days following receipt of such notice to express his views thereon. Following such ten day period, the Commission shall have 21 days, exclusive of holidays, to order such modification of or addition to the conditions of release.

(c) The Commission may require a parolee to reside in or participate in the program of a residential treatment center, or both, for all or part of the period of parole.

(d) The Commission may require a parolee, who is an addict, within the meaning of section 4251(a), or a drug dependent person within the meaning of section 2(8) of the Public Health Service Act, as amended, to participate in the community supervision program authorized by section 4255 for all or part of the period of parole.

(e) A parolee may petition the Commission on his own behalf for a modification of conditions pursuant to this section.

(f) The notice provisions of paragraph (b) of this section shall not apply to modification of parole or mandatory release conditions pursuant to a revocation proceeding or pursuant to paragraph (e) of this section.

(g) A parolee may appeal an order to impose or modify parole conditions under the procedures of §§ 2.25 and 2.26 as applicable not later than thirty days after the effective date of such conditions.

(h) A prisoner who, having been granted a parole date, subsequently refuses to sign the parole certificate, or any other consent form necessary to fulfill the conditions of parole, shall be deemed to have withdrawn the application for parole as of the date of refusal to sign. Such a prisoner shall be scheduled for a special interview on the next available docket to clarify the consequences of that refusal and to inform the prisoner that, in order to be again considered for parole, the prisoner must reapply for parole consideration. With respect to prisoners who are required to be released to supervision through good time reductions (pursuant to 18 U.S.C. 4161 and 4164), the conditions of parole set forth in this rule, and any other special conditions ordered by the Commission, shall be in full force and effect upon the established release date regardless of any refusal by the releasee to sign the parole certificate.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 59528, Oct. 16, 1979; 45 FR 84054, Dec. 22, 1980; 46 FR 52354, Oct. 27, 1981]

§ 2.41 Travel approval.

(a) The probation officer may approve travel outside the district without approval of the Regional Commissioner in the following situations:

(1) Vacation trips not to exceed thirty days.

(2) Trips, not to exceed thirty days, to investigate reasonably certain employment possibilities.

(3) Recurring travel across a district boundary, not to exceed fifty miles outside the district, for purpose of employment, shopping, or recreation.

(b) Specific advance approval by the Regional Commissioner is required for other travel (including travel outside the contiguous forty-eight states, employment more than fifty miles outside the district, and vacations exceeding thirty days). A request for such permission shall be in writing and must demonstrate a substantial need for such travel. In cases falling under the criteria of § 2.17, the concurrence of two out of three Commissioners shall be required to grant such permission.

(c) A special condition imposed by the Regional Commissioner prohibiting certain travel shall supersede any general rules relating to travel as set forth above.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3408, Jan. 16, 1979]

§ 2.42 Probation officer's reports to Commission.

A supervision report shall be submitted by the responsible probation officer to the Commission for each parolee after the completion of 12 months of continuous supervision and annually thereafter. The probation officer shall submit such additional reports as the Commission may direct.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3409, Jan. 16, 1979]

§ 2.43 Early termination.

(a)(1) Upon its own motion or upon request of the parolee, the Commission may terminate supervision, and thus jurisdiction, over a parolee prior to the expiration of his maximum sentence.

(2) A committed youth offender may be granted an early termination of jurisdiction (unconditional discharge) not earlier than after one year of continuous supervision on parole. When termination of jurisdiction prior to the expiration of sentence is granted in the case of a youth offender, his conviction shall be automatically set aside. A certificate setting aside his conviction shall be issued in lieu of a certificate of termination.

(b) Two years after release on supervision, and at least annually thereafter, the Commission shall review the status of each parolee to determine the need for continued supervision. In calculating such two-year period there shall not be included any period of release on parole prior to the most recent release, nor any period served in confinement on any other sentence. A review will also be conducted whenever early termination is recommended by the supervising probation officer.

(c)(1) Five years after release on supervision, the Commission shall terminate supervision over such parolee unless it is determined, after a hearing conducted in accordance with the procedures prescribed in 18 U.S.C. 4214(a)(2), that such supervision should not be terminated because there is a likelihood that the parolee will engage in conduct violating any criminal law. Such hearing may be conducted by a hearing examiner or other official designated by the Regional Commissioner. In calculating such five-year period, there shall not be included any period of release on parole prior to the most recent release or any period served in confinement on any other sentence.

(2) If supervision is not terminated under paragraph (c)(1) of this section the parolee may request a hearing annually thereafter, and a hearing shall be conducted with respect to termination of supervision not less frequently than biennially.

(3) A parolee may appeal an adverse decision under paragraph (c)(1) or (2) of this section pursuant to §§ 2.25, 2.26, or 2.27 as applicable.

(d) The Regional Commissioner in the region of supervision shall have authority to make decisions under this section pursuant to the guidelines set forth below; except that in the case of a parolee classified under the provisions of § 2.17, an affirmative decision to terminate supervision under paragraph (b) of this section, or a decision to terminate or continue supervision under paragraph (c) of this section shall be made pursuant to the provisions of § 2.17.

(e) *Early termination guidelines:* In determining whether to grant early termination from supervision, the Commission shall apply the following guidelines:

(1) Absent case-specific factors to the contrary, termination of supervision shall be considered indicated when:

(i) A parolee originally classified in the very good risk category (pursuant to § 2.20) has completed two continuous years of supervision free from any indication of new criminal behavior or serious parole violation; and

(ii) A parolee originally classified in other than the very good risk category (pursuant to § 2.20) has completed three continuous years of supervision free from any indication of new criminal behavior or serious parole violation.

NOTE: As used in this section, an indication of new criminal behavior includes a new arrest if supported by substantial evidence of guilt, even if no conviction or parole revocation results.

(2) Decisions to continue the parolee under supervision past the period indicated above may be made where case-specific factors justify a conclusion that continued supervision is needed to protect the public welfare. Such case-specific factors may relate to the current behavior of the parolee (for example, a parolee whose behavior

begins to deteriorate as the normally expected time for termination approaches) or to the parolee's background (for example, a parolee with a history of repetitive assaultive conduct or substantial involvement in large scale or organized criminal activity). In such cases, an additional period of supervision prior to termination of jurisdiction may be warranted.

(3) Decisions to terminate supervision prior to completion of the three year period specified in paragraph (e)(1)(ii) of this section may be made where it appears that the parolee is a better risk than indicated by the salient factor score as originally calculated. However, termination of supervision prior to the completion of two years of difficulty-free supervision will not be granted unless case-specific factors clearly indicate that continued supervision would be counterproductive.

(4) Cases with pending criminal charge(s) shall not be terminated from supervision until disposition of such charge(s) is known.

(5) After five continuous years of supervision, decisions to terminate will be made in accordance with subsection (c) of this rule.

[46 FR 28649, May 28, 1981, as amended at 46 FR 35639, July 10, 1981]

§ 2.44 Summons to appear or warrant for retaking of parolee.

(a) If a parolee is alleged to have violated the conditions of his release, and satisfactory evidence thereof is presented, the Commission or a member thereof may:

(1) Issue a summons requiring the offender to appear for a preliminary interview or local revocation hearing.

(2) Issue a warrant for the apprehension and return of the offender to custody.

A summons or warrant may be issued or withdrawn only by the Commission, or a member thereof.

(b) Any summons or warrant under this section shall be issued as soon as practicable after the alleged violation is reported to the Commission, except when delay is deemed necessary. Issuance of a summons or warrant may be withheld until the frequency or seriousness of violations, in the opinion of the Commission, requires such issuance. In the case of any parolee charged with a criminal offense, issuance of a summons or warrant may be withheld, or a warrant may be issued and held in abeyance pending disposition of the charge.

(c) A summons or warrant may be issued only within the prisoner's maximum term or terms except that in the case of a prisoner released as if on parole pursuant to 18 U.S.C. 4164, such summons or warrant may be issued only within the maximum term or terms, less one-hundred eighty days. A summons or warrant shall be considered issued when signed and placed in the mail at the Commission Headquarters or appropriate regional office.

(d) The issuance of a warrant under this section operates to bar the expiration of the parolee's sentence. Such warrant maintains the Commission's jurisdiction to retake the parolee either before or after the normal expiration date of the sentence and to reach a final decision as to revocation of parole and forfeiture of time pursuant to § 2.52(c).

(e) A summons or warrant issued pursuant to this section shall be accompanied by a statement of the charges against the parolee, the applicable procedural rights under the Commission's regulations and the possible actions which may be taken by the Commission. A summons shall specify the time and place the parolee shall appear for a revocation hearing. Failure to appear in response to a summons shall be grounds for issuance of a warrant.

[42 FR 39809, Aug. 5, 1977, as amended at 45 FR 84055, Dec. 22, 1980]

§ 2.45 Same; youth offenders.

(a) In addition to the issuance of a summons or warrant pursuant to § 2.44 above, the Commission or a member thereof, when of the opinion that a youth offender will be benefitted by further treatment in an institution or other facility, may direct his return to custody or issue a warrant for his apprehension and return to custody.

(b) Upon his return to custody, such youth offender shall be scheduled for a revocation hearing.

§ 2.46 Execution of warrant and service of summons.

(a) Any officer of any Federal correctional institution or any Federal officer authorized to serve criminal process within the United States, to whom a warrant is delivered shall execute such warrant by taking the parolee and returning him to the custody of the Attorney General.

(b) On arrest of the parolee the officer executing the warrant shall deliver to him a copy of the Warrant Application listing the charges against the parolee, the applicable procedural rights under the Commission's regulations and the possible actions which may be taken by the Commission.

(c) If execution of the warrant is delayed pending disposition of local charges, for further investigation, or for some other purpose, the parolee is to be continued under supervision by the probation officer until the normal expiration of the sentence, or until the warrant is executed, whichever first occurs. Monthly supervision reports are to be submitted, and the parolee must continue to abide by all the conditions of release.

(d) A summons to appear at a preliminary interview or revocation hearing shall be served upon the parolee in person by delivering to the parolee a copy of the summons. Service shall be made by any Federal officer authorized to serve criminal process within the United States, and certification of such service shall be returned to the appropriate regional office of the Commission.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3409, Jan. 16, 1979]

§ 2.47 Warrant placed as a detainer and dispositional review.

(a) When a parolee is serving a new sentence in an institution, a parole violation warrant may be placed against him as a detainer.

(1) If such prisoner is serving a new sentence in a federal institution, a revocation hearing shall be scheduled within 120 days of notification of placement of the detainer, or as soon thereafter as practicable, provided the prisoner is eligible for and has applied for an initial hearing on the new sentence, or is serving a new sentence of one year or less. In any other case, the detainer shall be reviewed on the record pursuant to subsection (a)(2) of this rule.

(2) If the prisoner is serving a new sentence in a state or local institution, the violation warrant shall be reviewed by the Regional Commissioner not later than 180 days following notification to the Commission of such placement. The parolee shall receive notice of the pending review, and shall be permitted to submit a written application containing information relative to the disposition of the warrant. He shall also be notified of his right to request counsel under the provisions of § 2.48(b) to assist him in completing this written application.

(b) Following a dispositional record review, the Regional Commissioner may:

(1) Pursuant to the general policy of the Commission, let the warrant stand as a detainer and:

(a) If the prisoner is serving a state or local sentence, order that a revocation hearing be scheduled upon return to a federal institution or upon completion of twenty-four months in confinement on the new term, whichever comes first. However, a hearing under this subsection will not be scheduled for a prisoner in state or local custody serving a new term for life without possibility of parole, a sentence to death, or who is incarcerated outside the United States.

(b) If the prisoner is serving a federal sentence, order that the revocation hearing be scheduled to coincide with the initial hearing on the new federal sentence or upon release from the new sentence, whichever comes first.

(2) Withdraw the warrant, and either order reinstatement of the parolee to supervision upon release from confinement or close the case if the expiration date has passed.

(c) Revocation hearings pursuant to this section shall be conducted in accordance with the provisions governing institutional revocation hearings, except that a hearing conducted at a state or local facility may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Regional Commissioner. Following a revocation hearing conducted pursuant to this section, the Commission may take anv action specified in § 2.52.

(d)(1) A parole violator whose parole is revoked shall be given credit for all time in federal, state, or local confinement on a new offense for purposes of satisfaction of the reparole guidelines at §§ 2.20 and 2.21.

(2) However, it shall be the policy of the Commission that the revoked parolee's original sentence (which due to the new conviction, stopped running upon his last release from federal confinement on parole) again start to run only upon release from the confinement portion of the new sentence or the date of reparole granted pursuant to these rules, whichever comes first. This subsection does not apply to cases where, by law, the running of the original sentence is not interrupted by a new conviction (e.g., YCA; NARA; Mexican or Canadian treaty cases).

(e) If a Regional Commissioner determines that additional information is required in order to make a decision pursuant to paragraph (a)(2) of this section, he may schedule a dispositional hearing at the state or local institution where the parolee is confined to obtain such information. Such hearing may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Regional Commissioner. The parolee shall have notice of such hearing, be allowed to testify in his behalf, and have opportunity for counsel as provided in § 2.48(b).

[46 FR 35637, July 10, 1981, and 47 FR 5411, Feb. 5, 1982]

§ 2.48 Revocation: Preliminary interview.

(a) *Interviewing Officer.* A parolee who is retaken on a warrant issued by a Commissioner shall be given a preliminary interview by an official designated by the Regional Commissioner to enable the Commission to determine if there is probable cause to believe that the parolee has violated his parole as charged, and if so, whether a revocation hearing should be conducted. The official designated to conduct the preliminary interview may be a United States Probation Officer in the district where the prisoner is confined, provided he is not the officer who recommended that the warrant be issued.

(b) *Notice and Opportunity to Postpone Interview.* At the beginning of the preliminary interview, the interviewing officer shall ascertain that the Warrant Application has been given to the parolee as required by § 2.46(b), and shall advise the parolee that he may have the preliminary interview postponed in order to obtain representation by an attorney or arrange for the attendance of witnesses. The parolee shall also be advised that if he cannot afford to retain an attorney he may apply to a United States District Court for appointment of counsel to represent him at the preliminary interview and the revocation hearing pursuant to 18 U.S.C. 3006A. In addition, the parolee may request the Commission to obtain the presence of persons who have given information upon which revocation may be based. Such adverse witnesses shall be requested to attend the preliminary interview unless the parolee admits a violation or has been convicted of a new offense while on supervision or unless the interviewing officer finds good cause for their non-attendance. Pursuant to § 2.51 a subpoena may issue for the appearance of adverse witnesses or the production of documents.

(c) *Review of the charges.* At the preliminary interview, the interviewing officer shall review the violation charges with the parolee, apprise the parolee of the evidence which has been presented to the Commission, receive the statements of witnesses and documentary evidence on behalf of the parolee, and allow cross-examination of those witnesses in attendance. Disclosure of the evidence presented to the Commission shall be made pursuant to § 2.50(d).

(d) At the conclusion of the preliminary interview, the interviewing officer shall inform the parolee of his recommended decision as to whether there is probable cause to believe that the parolee has violated the conditions of his release, and shall submit to the

Commission a digest of the interview together with his recommended decision.

(1) If the interviewing officer's recommended decision is that no probable cause may be found to believe that the parolee has violated the conditions of his release, the responsible Regional Commissioner shall review such recommended decision and notify the parolee of his final decision concerning probable cause as expeditiously as possible following receipt of the interviewing officer's digest. A decision to release the parolee shall be implemented without delay.

(2) If the interviewing officer's recommended decision is that probable cause may be found to believe that the parolee has violated a condition (or conditions) of his release, the responsible Regional Commissioner shall notify the parolee of his final decision concerning probable cause within 21 days of the date of the preliminary interview.

(3) Notice to the parolee of any final decision of a Regional Commissioner finding probable cause and ordering a revocation hearing shall state the charges upon which probable cause has been found and the evidence relied upon.

(e) *Release notwithstanding probable cause:* If the Commission finds probable cause to believe that the parolee has violated the conditions of his release, reinstatement to supervision or release pending further proceeding may nonetheless be ordered if it is determined that:

(1) Continuation of revocation proceedings is not warranted despite the violations found; or

(2) Incarceration pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations, and that the parolee is not likely to fail to appear for further proceedings, and that the parolee does not constitute a danger to himself or others.

(f) *Conviction as probable cause:* Conviction of a Federal, State, or local crime committed subsequent to release by a parolee shall constitute probable cause for the purposes of this section and no preliminary interview shall be conducted unless otherwise ordered by the Regional Commissioner.

(g) *Local revocation hearing:* A postponed preliminary interview may be conducted as a local revocation hearing by an examiner panel or other interviewing officer designated by the Regional Commissioner provided that the parolee has been advised that the postponed preliminary interview will constitute his final revocation hearing.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3408, 3409, Jan. 16, 1979; 46 FR 42842, Aug. 25, 1981; 47 FR 25735, June 15, 1982]

§ 2.49 Place of revocation hearing.

(a) If the parolee requests a local revocation hearing, he shall be given a revocation hearing reasonably near the place of the alleged violation(s) or arrest, if the following conditions are met:

(1) The parolee has not been convicted of a crime committed while under supervision; and

(2) The parolee denies that he has violated any condition of his release.

(b) If there are two or more alleged violations, the hearing may be conducted near the place of the violation chiefly relied upon as a basis for the issuance of the warrant or summons as determined by the Regional Commissioner.

(c) A parolee who voluntarily waives his right to a local revocation hearing, or who admits any violation of the conditions of his release, or who is retaken following conviction of a new crime, shall be given a revocation hearing upon his return to a Federal institution. However, the Regional Commissioner may, on his own motion, designate a case for a local revocation hearing.

(d) A parolee retaken on a warrant issued by the Commission shall be retained in custody until final action relative to revocation of his release, unless otherwise ordered by the Regional Commissioner under § 2.48(e)(2). A parolee who has been given a revocation hearing pursuant to the issuance of a summons under § 2.44 shall remain on supervision pending the decision of the Commission.

(e) A local revocation hearing shall be scheduled to be held within sixty days of the probable cause determination. Institutional revocation hearings shall be scheduled to be held within ninety days of the date of the execution of the violator warrant upon which the parolee was retaken. However, if a parolee requests and receives any postponement or consents to a postponed revocation proceeding, or if a parolee by his actions otherwise precludes the prompt conduct of such proceedings, the above-stated time limits may be extended. A local revocation hearing may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Regional Commissioner.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3408, 3409, Jan. 16, 1979]

§ 2.50 Revocation hearing procedure.

(a) The purpose of the revocation hearing shall be to determine whether the parolee has violated the conditions of his release and, if so, whether his parole or mandatory release should be revoked or reinstated.

(b) The alleged violator may present witnesses, and documentary evidence in his behalf. However, the presiding hearing officer or examiner panel may limit or exclude any irrelevant or repetitious statement or documentary evidence.

(c) At a local revocation hearing, the Commission may on the request of the alleged violator or on its own motion, request the attendance of persons who have given statements upon which revocation may be based. Those witnesses who are present shall be made available for questioning and cross-examination in the presence of the alleged violator unless the presiding hearing officer or examiner panel finds good cause for their non-attendance. Adverse witnesses will not be requested to appear at institutional revocation hearings.

(d) All evidence upon which the finding of violation may be based shall be disclosed to the alleged violator at the revocation hearing. The hearing officer or examiner panel may disclose documentary evidence by permitting the alleged violator to examine the document during the hearing, or where appropriate, by reading or summarizing the document in the presence of the alleged violator.

(e) In lieu of an attorney, an alleged violator may be represented at a revocation hearing by a person of his choice. However, the role of such non-attorney representative shall be limited to offering a statement on the alleged violator's behalf with regard to reparole or reinstatement to supervision.

(f) A revocation decision may be appealed under the provisions of §§ 2.25 and 2.26, or 2.27 as applicable.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3408, Jan. 16, 1979]

§ 2.51 Issuance of a subpoena for the appearance of witnesses or production of documents.

(a)(1) Preliminary Interview or Local Revocation Hearing: If any person who has given information upon which revocation may be based refuses, upon request by the Commission to appear, the Regional Commissioner may issue a subpoena for the appearance of such witness. Such subpoena may also be issued at the discretion of the Regional Commissioner in the event such adverse witness is judged unlikely to appear as requested.

(2) In addition, the Regional Commissioner may, upon his own motion or upon a showing by the parolee that a witness whose testimony is necessary to the proper disposition of his case will not appear voluntarily at a local revocation hearing or provide an adequate written statement of his testimony, issue a subpoena for the appearance of such witness at the revocation hearing.

(3) Both such subpoenas may also be issued at the discretion of the Regional Commissioner if it is deemed necessary for orderly processing of the case.

(b) A subpoena issued pursuant to paragraph (a) of this section above may require the production of documents as well as, or in lieu of, a personal appearance. The subpoena shall specify the time and the place at which the person named therein is commanded to appear, and shall specify any documents required to be produced.

(c) A subpoena may be served by any Federal officer authorized to serve criminal process. The subpoena may be served at any place within the judicial district in which the place specified in the subpoena is located, or any place where the witness may be found. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person.

(d) If a person refuses to obey such subpoena, the Commission may petition a court of the United States for the judicial district in which the parole proceeding is being conducted, or in which such person may be found, to require such person to appear, testify, or produce evidence. The court may issue an order requiring such person to appear before the Commission, and failure to obey such an order is punishable by contempt.

§ 2.52 Revocation decisions.

(a) Whenever a parolee is summoned or retaken by the Commission, and the Commission finds by a preponderance of the evidence, that the parolee has violated a condition of the parole, the Commission may take any of the following actions:

(1) Restore the parolee to supervision including where appropriate: (i) Reprimand; (ii) modification of the parolee's conditions of release; (iii) referral to a residential community treatment center for all or part of the remainder of his original sentence; or

(2) Revoke parole.

(b) If parole is revoked pursuant to this section, the Commission shall also determine, on the basis of the revocation hearing, whether reparole is warranted or whether the prisoner should be continued for further review.

(c) A parolee whose release is revoked by the Commission will receive credit on service of his sentence for time spent under supervision, except as provided below:

(1) If the Commission finds that such parolee intentionally refused or failed to respond to any reasonable request, order, summons or warrant of the Commission or any agent thereof, the Commission may order the forfeiture of the time during which the parolee so refused or failed to respond, and such time shall not be credited to service of the sentence.

(2) If the parolee has been convicted of a new offense committed subsequent to his release of parole, which is punishable by a term of imprisonment, forfeiture of the time from the date of such release to the date of execution of the warrant shall be ordered, and such time shall not be credited to service of the sentence. An actual term of confinement or imprisonment need not have been imposed for such conviction; it suffices that the statute under which the parolee was convicted permits the trial court to impose any term of confinement or imprisonment in any penal facility. If such conviction occurs subsequent to a revocation hearing, the Commission may reopen the case and schedule a further hearing relative to time forfeiture and such further disposition as may be appropriate. However, in no event shall the violator term imposed under this subsection, taken together with the time served before release, exceed the total length of the original sentence.

(d) (1) Notwithstanding the above, prisoners committed under the Narcotic Addict Rehabilitation Act or the Youth Corrections Act shall not be subject to any forfeiture provision, but shall serve uninterrupted sentences from the date of conviction, except as provided in § 2.10 (b) and (c).

(2) The commitment of a juvenile offender under the Federal Juvenile Delinquency Act may not be extended past the offender's twenty-first birthday unless the juvenile has attained his nineteenth birthday at the time of his commitment, in which case his commitment shall not exceed the lesser of two years or the maximum term which could have been imposed on an adult convicted of the same offense.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3408, 3410, Jan. 16, 1979]

§ 2.53 Mandatory parole.

(a) A prisoner (including a prisoner sentenced under the Narcotic Addict Rehabilitation Act, Federal Juvenile Delinquency Act, or the provisions of 5010(c) of the Youth Corrections Act) serving a term or terms of 5 years or longer shall be released on parole after completion of two-thirds of each consecutive term or terms or after completion of 30 years of each term or terms of more than 45 years (including life terms), whichever comes earlier, unless pursuant to a hearing under this section, the Commission determines that there is a reasonable probability that the prisoner will commit any Federal, State, or local crime or that the prisoner has frequently or seriously violated the rules of the institution in which he is confined. If parole is denied pursuant to this section, such prisoner shall serve until the expiration of his sentence less good time.

(b) When feasible, at least 60 days prior to the scheduled two-thirds date, a review of the record shall be conducted by an examiner panel. If a mandatory parole is ordered following this review, no hearing shall be conducted.

(c) A prisoner released on mandatory parole pursuant to this section shall remain under supervision until the expiration of the full term of his sentence unless the Commission terminates parole supervision pursuant to § 2.43 prior to the full term date of the sentence.

(d) A prisoner whose parole has been revoked and whose parole violator term is 5 years or more shall be eligible for mandatory parole under the provisions of this section upon completion of two-thirds of the violator term and shall be considered for mandatory parole under the same terms as any other eligible prisoner.

[43 FR 38822, Aug. 31, 1978]

§ 2.54 Reviews pursuant to 18 U.S.C. 4215(c).

The Attorney General, within thirty days after entry of a Regional Commissioner's decision, may request in writing that the National Appeals Board review such decision. Within sixty days of the receipt of the request the National Appeals Board shall, upon the concurrence of two members, affirm, modify, or reverse the decision, or order a rehearing at the institutional or regional level. The Attorney General and the prisoner affected shall be informed in writing of the decision, and the reasons therefor.

[42 FR 39821, Aug. 5, 1977, as amended at 43 FR 17470, Apr. 25, 1978; 44 FR 3408, Jan. 16, 1979]

§ 2.55 Disclosure of file prior to parole hearings: Prehearing review.

(a) *Procedure.* (1) At least 60 days prior to a scheduled hearing pursuant to §§ 2.12 or 2.14, each prisoner shall be furnished a notice of his right to request disclosure of the reports and other documents that may be relied upon by the Commission in making its determination.

(2) Upon request by the prisoner, review of disclosable documents in the institution file will be permitted by the Bureau of Prisons, pursuant to its regulations, within fifteen days of the request. Such review may be requested prior to the hearing, or at any other time thereafter.

(3) The prisoner shall be permitted to obtain, prior to a parole hearing, copies of any disclosable documents within the scope of this section that may have been retained in the Commission's regional office file, provided that the regional office receives such request at least thirty days in advance of such hearing to allow for processing.

(b) *Scope of disclosure.* The scope of disclosure under this section shall be limited to the following reports and other documents which the Commission utilizes in making its parole determinations:

(1) At initial hearings and reconsideration hearings, official reports and other documents conveying relevant information concerning the prisoner's offense behavior, prior record, history and characteristics, institutional performance, and parole release plan.

(2) At interim review hearings pursuant to § 2.14 of these rules, official reports and other documents informing the Commission of factors which have changed, or which may have changed, since the date of the last hearing.

(c) *Exemptions to disclosure.* A document may be withheld from disclosure to the extent it contains:

(1) Diagnostic opinions, which if known to the prisoner could lead to a

serious disruption of his institutional program;

(2) Material which would reveal a source of information obtained upon a promise of confidentiality; or

(3) Any other information, which if disclosed, might result in narm, physical or otherwise to any person. (18 U.S.C. 4208(c)).

(d) *Summarization of material withheld.* (1) If any document, or portion thereof, is deemed by the originating agency to fall within an exemption to disclosure, and non-disclosure appears warranted, such agency shall identify the material to be withheld and the basis for withholding under paragraph (b) of this section, and shall furnish for disclosure to the prisoner a summary conveying the general nature of the assertion(s) contained in the document withheld, with as much specificity as circumstances will permit. However, such summary should not be so specific that the protected items of information would be subject to identification.

(2) All official reports bearing upon the parole determination should be sent to the institution in which the prisoner is confined. Preparation for disclosure (including any necessary summarizing) must be completed prior to the submission of the report.

(3) Documents which have not been cleared for disclosure or summarized may not be considered by the Commission in its determination, without a signed waiver of disclosure from the prisoner.

(e) *Waivers of disclosure.* If any document relevant to the parole determination has not been disclosed to the prisoner within the time limits specified in this rule, the prisoner shall be offered the opportunity to waive prehearing disclosure of such document without prejudice to the prisoner's right to review the document (or a summary thereof) at any time thereafter. If the prisoner chooses not to sign a waiver, the examiner panel shall continue the hearing to the end of the docket, or to the next docket, in order to permit adequate disclosure. A continuance for the purpose of permitting disclosure may not be extended beyond the next hearing docket.

(f) *Late-received documents.* In the event an official report or other document is received following the parole hearing but during the pendency of the parole determination proceeding, and such document contains new and significant adverse information, the prisoner shall be placed on the next docket for a re-hearing and the document shall be promptly forwarded for inclusion in the prisoner's institutional file. The Commission shall notify the prisoner of such hearing and of his right to request disclosure of the document pursuant to the provisions of this section. If such document is determined not to contain new and significant information, it shall not be considered in the parole determination.

(g) *Reopened cases.* Whenever a case is reopened for a new hearing under § 2.28 or related sections, the relevant supporting document(s) shall be sent to the institution wherein the prisoner is confined and the prisoner shall be informed of his right to request disclosure of such documents.

[44 FR 26551, May 4, 1979]

§ 2.56 Disclosure of Parole Commission regional office file (Privacy Act disclosure).

(a) *Procedure.* Copies of disclosable documents pertaining to a prisoner or parolee which are contained in the regional office files of the Commission may be obtained at any time by that prisoner or parolee upon written request pursuant to the Privacy Act of 1974. Such request shall be answered within forty business days of its receipt, absent an emergency. Other persons may obtain copies of such documents only upon proof of authorization from the prisoner or parolee concerned.

(b) *Scope of disclosure.* Disclosure under the Privacy Act of 1974 shall extend to Commission documents concerning the prisoner or parolee making the request. Documents which are contained in the regional file and which are prepared by agencies other than the Commission shall be referred to the appropriate agency for a response pursuant to its regulations, unless such document has previously been prepared for disclosure pursuant to § 2.55 or is fully disclosable on its face. Any request for copies of court documents (including the presentence investigation report) must be directed to the appropriate court.

(c) *Exemptions to disclosure.* A document may be withheld from disclosure to the extent it contains:

(1) Diagnostic opinions, which if known to the prisoner could lead to a serious disruption of his institutional program;

(2) Material which would reveal a source of information obtained upon a promise of confidentiality; or

(3) Any other information, which if disclosed, might result in harm, physical or otherwise, to any person.

(d) *Specification of documents withheld.* Documents that are withheld pursuant to paragraph (c) of this section shall be identified for the requester together with the applicable exemption for withholding each document or portion thereof. In addition, the requester must be informed of his or her right to appeal any non-disclosure to the Assistant Attorney General, Office of Legal Policy.

(e) *Hearing record.* Upon request by the prisoner or parolee concerned, the Commission shall promptly make available a copy of any verbatim record (e.g. tape recording) which it has retained of a hearing, pursuant to 18 U.S.C. 4208(f).

(f) *Costs.* In any case in which reproduction costs exceed three dollars (e.g. reproduction of over thirty pages or of one cassette and twenty-four pages), prisoners will be notified that they will be required to reimburse the United States for such reproduction costs. The Regional Commissioner may waive such reimbursement upon a showing of the prisoner's inability to pay. The Regional Commissioner may require payment in advance of making a disclosure in circumstances where deemed necessary.

(g) *Cross References.* The Commission's authority to promulgate rules governing disclosure pursuant to the Privacy Act of 1974 may be found at 28 CFR 16.85.

(5 U.S.C. 552a(j)(2))

[44 FR 26552, May 4, 1979, as amended at 46 FR 52354, Oct. 27, 1981]

§ 2.57 Special parole terms.

(a) The Drug Abuse Prevention and Control Act, 21 U.S.C. Sections 801 to 966, provides that, on conviction of certain offenses, mandatory "special parole terms" must be imposed by the court as part of the sentence. This term is an additional period of supervision which commences upon completion of any period on parole or mandatory release supervision from the regular sentence; or if the prisoner is released without supervision, commences upon such release.

(b) At the time of release under the regular sentence, whether under full term expiration or under a mandatory release certificate or a parole certificate, a separate Special Parole Term certificate will be issued to the prisoner by the Bureau of Prisons.

(c) Should a parolee be found to have violated conditions of release during supervision under his regular sentence, i.e., before commencement of the Special Parole Term, he may be returned as a violator under his regular sentence; the Special Parole Term will follow unaffected, as in paragraph (a) of this section. Should a parolee violate conditions of release during the Special Parole Term he will be subject to revocation on the Special Parole Term as provided in § 2.52, and subject to reparole or mandatory release under the Special Parole Term.

(d) If a prisoner is reparoled under the revoked Special Parole Term a certificate of parole to Special Parole Term is issued by the Commission. If the prisoner is mandatorily released under the revoked "special parole term" a certificate of mandatory release to Special Parole Term will be issued by the Bureau of Prisons.

(e) If regular parole or mandatory release supervision is terminated under § 2.43, the Special Parole Term commences to run at that point in time. Early termination from supervision from a Special Parole Term may occur as in the case of a regular parole term, except that the time periods considered shall commence from the beginning of the Special Parole Term.

[42 FR 39809, Aug. 5, 1977, as amended at 44 FR 3410, Jan. 16, 1979. Redesignated at 44 FR 26551, May 4, 1979]

§ 2.58 Prior orders.

Any order of the United States Board of Parole entered prior to May 14, 1976, including, but not limited to, orders granting, denying, rescinding or revoking parole or mandatory release, shall be a valid order of the United States Parole Commission according to the terms stated in the order.

[42 FR 39809, Aug. 5, 1977. Redesignated at 44 FR 26551, May 4, 1979]

§ 2.59 Absence of hearing examiner.

In the absence of a hearing examiner, a Regional Commissioner may exercise the authority delegated to hearing examiners in § 2.23.

[42 FR 39809, Aug. 5, 1977. Redesignated at 44 FR 26551, May 4, 1979]

§ 2.60 Superior program achievement.

(a) Prisoners who demonstrate superior program achievement (in addition to a good conduct record) may be considered for a limited advancement of the presumptive date previously set according to the schedule below. Such reduction will normally be considered at an interim hearing or pre-release review. It is to be stressed that a clear conduct record is expected; this reduction applies only to cases with documented sustained superior program achievement over a period of 9 months or more in custody.

(b) Superior program achievement may be demonstrated in areas such as educational, vocational, industry, or counselling programs, and is to be considered in light of the specifics of each case.

(c) Upon a finding of superior program achievement, a previously set presumptive date may be advanced. The normal maximum advancement permissible for superior program achievement during the prisoner's entire term shall be as set forth in the following schedule. It is the intent of the Commission that this maximum be exceeded only in the most clearly exceptional cases.

(d) Partial advancements may be given [for example, a case with superior program achievement during only part of the term or a case with both superior program achievement and minor disciplinary infraction(s)]. Advancements may be given at different times; however, the limits set forth in the following schedule shall apply to the total combined advancement.

(e) Schedule of Permissible Reductions for Superior Program Achievement.

Total months required by original presumptive date	Permissible reduction
14 months or less	Not applicable.
15 to 22 months	Up to 1 month.
23 to 30 months	Up to 2 months.
31 to 36 months	Up to 3 months.
37 to 42 months	Up to 4 months.
43 to 48 months	Up to 5 months.
49 to 54 months	Up to 6 months.
55 to 60 months	Up to 7 months.
61 to 66 months	Up to 8 months.
67 to 72 months	Up to 9 months.
73 to 78 months	Up to 10 months.
79 to 84 months	Up to 11 months.
85 to 90 months	Up to 12 months.
91 plus months	Up to 13 months.[1]

[1] Plus up to 1 additional month for each 6 months or fraction thereof, by which the original date exceeds 96 months.

[44 FR 55004, Sept. 24, 1979; 44 FR 59527, Oct. 16, 1979]

PART 3—GAMBLING DEVICES

Sec.
3.1 Definition.
3.2 Assistant Attorney General, Criminal Division.
3.3 Registration.
3.4 Registration to be made by letter.
3.5 Seizure of gambling devices.
3.6 Seized gambling devices.

Authority: 89 Stat. 379; 5 U.S.C. 301, sec. 2, Reorganization Plan No. 2 of 1950, 64 Stat. 1261; 3 CFR, 1949-1953 Comp, unless otherwise noted.

Source: Order No. 331-65, 30 FR 2316, Feb. 20, 1965, unless otherwise noted.

Cross Reference: For Organization Statement, Federal Bureau of Investigation, see Subpart P of Part 0 of this Chapter.

§ 3.1 Definition.

For the purpose of this part, the term "Act" means the Act of January 2, 1951, 64 Stat. 1134, as amended by the Gambling Devices Act of 1962, 76 Stat. 1075, 15 U.S.C. 1171 et seq.

BEST DOCUMENT AVAILABLE

§ 3.2 Assistant Attorney General, Criminal Division.

The Assistant Attorney General, Criminal Division, is authorized to exercise the power and authority of and to perform the functions vested in the Attorney General by the Act. (See also 28 CFR 0.55(i).)

(28 U.S.C. 509 and 510)

[Order No. 960-81, 46 FR 52354, Oct. 27, 1981]

§ 3.3 Registration.

Persons required to register pursuant to section 3 of the Act shall register with the Assistant Attorney General, Criminal Division, Department of Justice, Washington, D.C. 20530.

§ 3.4 Registration to be made by letter.

No special forms are prescribed for the purpose of registering under the Act. Registration shall be accomplished by a letter addressed to the Assistant Attorney General, Criminal Division, setting forth the information required by section 3(b)(4) of the Act. Registration should be made by registered or certified mail inasmuch as receipt of registrations will not otherwise be acknowledged. The registration requirement of the Act is an annual requirement. Any person engaged in any one or more of the activities for which registration is required under the Act must, in conformity with the provisions of the Act, register in each calendar year in which he engages in such activities.

§ 3.5 Seizure of gambling devices.

The Director, Associate Director, Assistants to the Director, Executive Assistant Directors, Assistant Directors, inspectors and agents of the Federal Bureau of Investigation are authorized to exercise the power and authority vested in the Attorney General to make seizures of gambling devices.

(28 U.S.C. 509 and 510)

[Order No. 960-81, 46 FR 52354, Oct. 27, 1981]

§ 3.6 Seized gambling devices.

All gambling devices seized pursuant to the Act shall be held for or turned over to, the United States Marshal for the district in which the seizure is made. Except for the power and authority conferred by § 3.5 and the power described in the last sentence of this section, United States Marshals are, in accordance with the proviso in the Act, authorized and designated as the officers to perform the various duties with respect to seizures and forfeitures of gambling devices under the Act which are comparable to the duties performed by collectors of customs or other persons with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws. The power to authorize remission or mitigation of seizure or forfeiture of gambling devices under the Act shall be exercised only by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or the Assistant Attorney General, Criminal Division.

(28 U.S.C. 509 and 510)

[Order No. 960-81, 46 FR 52354, Oct. 27, 1981]

PART 4—PROCEDURE GOVERNING APPLICATIONS FOR CERTIFICATES OF EXEMPTION UNDER THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AND THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Sec.

4.1 Definitions.
4.2 Who may apply for Certificate of Exemption.
4.3 Contents of application.
4.4 Supporting affidavit; additional information.
4.5 Character endorsements.
4.6 Institution of proceedings.
4.7 Notice of hearing; postponements.
4.8 Hearing.
4.9 Representation.
4.10 Waiver of oral hearing.
4.11 Appearance; testimony; cross-examination.
4.12 Evidence which may be excluded.
4.13 Record for decision. Receipt of documents comprising record; timing and extension.
4.14 Administrative law judge's recommended decision; exceptions thereto; oral argument before Commission.
4.15 Certificate of Exemption.
4.16 Rejection of application.
4.17 Availability of decisions.

AUTHORITY: Secs. 504, 606, 73 Stat. 536, 540 (29 U.S.C. 504, 526); and secs. 411, 507a, 88 Stat. 887, 894 (29 U.S.C. 1111, 1137), unless otherwise noted.

SOURCE: 44 FR 6890, Feb. 2, 1979, unless otherwise noted.

CROSS REFERENCE: For Organization Statement, U.S. Parole Commission, see Subpart V of Part 0 of this chapter.

§ 4.1 Definitions.

As used in this part:

(a) "Labor Act" means the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519).

(b) "Pension Act" means the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406) (88 Stat. 829).

(c) "Acts" means both of the above statutes.

(d) "Commission" means the United States Parole Commission.

(e) "Secretary" means the Secretary of Labor or his designee.

(f) For proceedings under the "Labor Act"

(1) "Employer" means the labor organization, or person engaged in an industry or activity affecting commerce, or group or association of employers dealing with any labor organization, which an applicant under § 4.2 desires to serve in a capacity for which he is ineligible under section 504(a) of the "Labor Act".

(2) All other terms used in this part shall have the same meaning as identical or comparable terms when those terms are used in the "Labor Act".

(g) For proceedings under the "Pension Act"

(1) "Employer" means the employee benefit plan with which an applicant under § 4.2 desires to serve in a capacity for which he is ineligible under section 411(a) of the "Pension Act" (29 U.S.C. section 1111).

(2) All other terms used in this part shall have the same meaning as identical or comparable terms when those terms are used in the "Pension Act".

§ 4.2 Who may apply for Certificate of Exemption.

Any person who has been convicted of any of the crimes enumerated in section 504(a) of the "Labor Act" whose service, present or prospective, as described in that section is or would be prohibited by that section because of such a conviction or a prison term resulting therefrom; or any person who has been convicted of any of the crimes enumerated in section 411(a) of the "Pension Act" (29 U.S.C. section 1111) whose service, present or prospective, as described in that section is or would be prohibited by that section because of such a conviction or a prison term resulting therefrom, may apply to the Commission for a Certificate of Exemption from such a prohibition under the applicable Act.

§ 4.3 Contents of application.

A person applying for a Certificate of Exemption shall file with the Office of General Counsel, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815-7286, a signed application under oath, in seven copies, which shall set forth clearly and completely the following information:

(a) The name and address of the applicant and any other names used by the applicant and dates of such use.

(b) A statement of all convictions and imprisonments which prohibit the applicant's service under the provisions of the applicable Act.

(c) Whether any citizenship rights were revoked as a result of conviction or imprisonment and if so the name of the court and date of judgment thereof and the extent to which such rights have been restored.

(d) The name and location of the employer and a description of the office or paid position, including the duties thereof, for which a Certificate of Exemption is sought.

(e) A full explanation of the reasons or grounds relied upon to establish that the applicant's service in the office or employment for which a Certificate of Exemption is sought would not be contrary to the purposes of the applicable Act.

(f) A statement that the applicant does not, for the purpose of the proceeding, contest the validity of any conviction.

(28 U.S.C. 509 and 510, 5 U.S.C. 301)

[44 FR 6890, Feb. 2, 1979, as amended at 46 FR 52354, Oct. 27, 1981]

§ 4.4 Supporting affidavit: additional information.

(a) Each application filed with the Commission must be accompanied by a signed affidavit, in 7 copies, setting forth the following concerning the personal history of the applicant:

(1) Place and date of birth. If the applicant was not born in the United States, the time of first entry and port of entry, whether he is a citizen of the United States, and if naturalized, when, where and how he became naturalized and the number of his Certificate of Naturalization.

(2) Extent of education, including names of schools attended.

(3) History of marital and family status, including a statement as to whether any relatives by blood or marriage are currently serving in any capacity with any employee benefit plan, or labor organization, group or association of employers dealing with labor organizations or industrial labor relations group, or currently advising or representing any employer with respect to employee organizing, concerted activities, or collective bargaining activities.

(4) Present employment, including office or offices held, with a description of the duties thereof.

(5) History of employment, including military service, in chronological order.

(6) Licenses held, at the present time or at any time in the past five years, to possess or carry firearms.

(7) Veterans' Administration claim number and regional office handling claim, if any.

(8) A listing (not including traffic offenses for which a fine of not more than $25 was imposed or collateral of not more than $25 was forfeited) by date and place of all arrests, convictions for felonies, misdemeanors, or offenses and all imprisonment or jail terms resulting therefrom, together with a statement of the circumstances of each violation which led to arrest or conviction.

(9) Whether applicant was ever on probation or parole, and if so the names of the courts by which convicted and the dates of conviction.

(10) Names and locations of all employee benefit plans, labor organizations or employer groups with which the applicant has ever been associated or employed, and all employers or employee benefit plans which he has advised or represented concerning employee organizing, concerted activities, or collective bargaining activities, together with a description of the duties performed in each such employment or association.

(11) A statement of applicant's net worth, including all assets held by him or in the names of others for him, the amount of each liability owed by him or by him together with any other person and the amount and source of all income during the immediately preceding five calendar years plus income to date of application.

(12) Any other information which the applicant feels will assist the Commission in making its determination.

(b) The Commission may require of the applicant such additional information as it deems appropriate for the proper consideration and disposition of his application.

§ 4.5 Character endorsements.

Each application filed with the Commission must be accompanied by letters or other forms of statement (in three copies) from six persons addressed to the Chairman, U.S. Parole Commission, attesting to the character and reputation of the applicant. The statement as to character shall indicate the length of time the writer has known applicant, and shall describe applicant's character traits as they relate to the position for which the exemption is sought and the duties and responsibilities thereof. The statement as to reputation shall attest to applicant's reputation in his community or in his circle of business or social acquaintances. Each letter or other form of statement shall indicate that it has been submitted in compliance with procedures under the respective Act and that applicant has informed the writer of the factual basis of his application. The persons submitting letters or other forms of statement shall not include relatives by blood or marriage, prospective employers, or persons serving in any official capacity with an employee benefit plan, labor organization, group or association of employers dealing with labor organizations or industrial labor relations group.

§ 4.6 Institution of proceedings.

All applications and supporting documents received by the Commission shall be reviewed for completeness by the Office of General Counsel of the Parole Commission and if complete and fully in compliance with the regulations of this part the Office of General Counsel shall accept them for filing. Applicant and/or his representative will be notified by the Office of General Counsel of any deficiency in the application and supporting documents. The amount of time allowed for deficiencies to be remedied will be specified in said notice. In the event such deficiencies are not remedied within the specified period or any extension thereof, granted after application to the Commission in writing within the specified period, the application shall be deemed to have been withdrawn and notice thereof shall be given to applicant.

§ 4.7 Notice of hearing; postponements.

Upon the filing of an application, the Commission shall: (a) Set the application for a hearing on a date within a reasonable time after its filing and notify the applicant of such date by certified mail; (b) give notice, as required by the respective Act, to the appropriate State, County, or Federal prosecuting officials in the jurisdiction or jurisdictions in which the applicant was convicted that an application for a Certificate of Exemption has been filed and the date for hearing thereon; and (c) notify the Secretary that an application has been filed and the date for hearing thereon and furnish him copies of the application and all supporting documents. Any party may request a postponement of a hearing date in writing from the Office of General Counsel at any time prior to ten (10) days before the scheduled hearing. No request for postponement other than the first for any party will be considered unless a showing is made of cause entirely beyond the control of the requester. The granting of such requests will be within the discretion of the Commission. In the event of a failure to appear on the hearing date as originally scheduled or extended, the absent party will be deemed to have waived his right to a hearing. The hearing will be conducted with the parties present participating and documentation, if any, of the absent party entered into the record.

§ 4.8 Hearing.

The hearing on the application shall be held at the offices of the Commision in Washington, D.C., or elsewhere as the Commission may direct. The hearing shall be held before the Commission, before one or more Commissioners, or before one or more administrative law judges appointed as provided by section 11 of the Administrative Procedure Act (5 U.S.C. 3105) as the Commission by order shall determine. Hearings shall be conducted in accordance with sections 7 and 8 of the Administrative Procedure Act (5 U.S.C. 556, 557).

§ 4.9 Representation.

The applicant may be represented before the Commission by any person who is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of any State or territory of the United States, or the District of Columbia, and who is not under any order of any court suspending, enjoining, restraining, or disbarring him from, or otherwise restricting him in, the practice of law. Whenever a person acting in a representative capacity appears in person or signs a paper in practice before the Commission, his personal appearance or signature shall constitute a representation to the Commission that under the provisions of this part and applicable law he is authorized and qualified to represent the particular person in whose behalf he acts. Further proof of a person's authority to act in a representative capacity may be required. When any applicant is represented by an attorney at law, any notice or other written communication required or permitted to be given to or by such applicant shall be given to or by such attorney. If an applicant is represented by more than one attorney, service by or upon any one of such attorneys shall be sufficient.

§ 4.10 Waiver of oral hearing.

The Commission upon receipt of a statement from the Secretary that he does not object, and in the absence of any request for oral hearing from the others to whom notice has been sent pursuant to § 4.7 may grant an application without receiving oral testimony with respect to it.

§ 4.11 Appearance: testimony; cross-examination.

(a) The applicant shall appear and, except as otherwise provided in § 4.10, shall testify at the hearing and may cross-examine witnesses.

(b) The Secretary and others to whom notice has been sent pursuant to § 4.7 shall be afforded an opportunity to appear and present evidence and cross-examine witnesses, at any hearing.

(c) In the discretion of the Commission or presiding officer, other witnesses may testify at the hearing.

§ 4.12 Evidence which may be excluded.

The Commission or officer presiding at the hearing may exclude irrelevant, untimely, immaterial, or unduly repetitious evidence.

§ 4.13 Record for decision. Receipt of documents comprising record; timing and extension.

(a) The application and all supporting documents, the transcript of the testimony and oral argument at the hearing, together with any exhibits received and other documents filed pursuant to these procedures and/or the Administrative Procedures Act shall be made parts of the record for decision.

(b) At the conclusion of the hearing the presiding officer shall specify the time for submission of proposed findings of fact and conclusions of law (unless waived by the parties); transcript of the hearing, and supplemental exhibits, if any. He shall set a tentative date for the recommended decision based upon the timing of these preliminary steps. Extensions of time may be requested by any party, in writing, from the Parole Commission. Failure of any party to comply with the time frame as established or extended will be deemed to be a waiver on his part of his right to submit the document in question. The adjudication will proceed and the absence of said document and reasons therefor will be noted in the record.

§ 4.14 Administrative law judge's recommended decision; exceptions thereto; oral argument before Commission.

Whenever the hearing is conducted by an administrative law judge, at the conclusion of the hearing he shall submit a recommended decision to the Commission, which shall include a statement of findings and conclusions, as well as the reasons therefor. The applicant, the Secretary and others to whom notice has been sent pursuant to § 4.7 may file with the Commission, within 10 days after having been furnished a copy of the recommended decision, exceptions thereto and reasons in support thereof. The Commission may order the taking of additional evidence and may request the applicant and others to appear before it. The Commission may invite oral argument before it on such questions as it desires.

§ 4.15 Certificate of Exemption.

The applicant, the Secretary and others to whom notice has been sent pursuant to § 4.7 shall be served a copy of the Commission's decision and order with respect to each application. Whenever the Commission decision is that the application be granted, the Commission shall issue a Certificate of Exemption to the applicant. The Certificate of Exemption shall extend only to the stated employment with the prospective employer named in the application.

§ 4.16 Rejection of application.

No application for a Certificate of Exemption shall be accepted from any person whose application for a Certificate of Exemption has been withdrawn, deemed withdrawn due to failure to remedy deficiencies in a timely manner, or denied by the Commission within the preceding 12 months.

§ 4.17 Availability of decisions.

The Commission's Decisions under both Acts are available for examination in the Office of the U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815-7286. Copies will be mailed upon written request to the Office of General Counsel, U.S. Parole Commission, at the above address at a cost of ten cents per page.

(28 U.S.C. 509 and 510, 5 U.S.C. 301)

[44 FR 6890, Feb. 2, 1979, as amended at 46 FR 52354, Oct. 27, 1981]

PART 5—ADMINISTRATION AND ENFORCEMENT OF FOREIGN AGENTS REGISTRATION ACT OF 1938, AS AMENDED

Sec.

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5.500 Maintenance of books and records.
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5.800 Ten-day filing requirement.
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Authority: Sec. 1, 56 Stat. 248, 257; 22 U.S.C. 620, unless otherwise noted.

Source: Order No. 376-67, 32 FR 6362, Apr. 22, 1967, unless otherwise noted.

§ 5.1 Administration and enforcement of the Act.

(a) The administration and enforcement of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611-621), is subject to the general supervision and direction of the Attorney General, assigned to, conducted, handled, and supervised by the Assistant Attorney General in charge of the Criminal Division (§ 0.60(b) of this chapter).

(b) The Assistant Attorney General is authorized to prescribe such forms, in addition to or in lieu of those specified in the regulations in this part, as may be necessary to carry out the purposes of this part.

(c) Copies of the Act, and of the rules, regulations, and forms prescribed pursuant to the Act, and information concerning the foregoing may be obtained upon request without charge from the Registration Unit, Criminal Division, Department of Justice, Washington, D.C. 20530.

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 523-73, 38 FR 18235, July 9, 1973; Order No. 568-74, 39 FR 18646, May 29, 1974]

§ 5.2 Inquiries concerning application of the Act.

Any inquiry concerning the application of the Act to any person should be addressed to the Registration Unit and should be accompanied by a detailed statement containing the following information:

(a) The identity of the agent and the foreign principal involved;

(b) The nature of the agent's activities for or in the interest of the foreign principal;

(c) A copy of the existing or proposed written contract with the foreign principal, or a full description of the terms and conditions of each existing or proposed oral agreement.

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 568-74, 39 FR 18646, May 29, 1974]

§ 5.3 Filing of a registration statement.

All statements, exhibits, amendments, and other documents and papers required to be filed under the Act or under this part shall be submitted in duplicate to the Registration Unit. Filing of such documents may be made in person or by mail, and they shall be deemed to be filed upon their receipt by the Registration Unit.

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 523-73, 38 FR 18235, July 9, 1973]

§ 5.4 Computation of time.

Sundays and holidays shall be counted in computing any period of time prescribed in the Act or in the rules and regulations in this part.

§ 5.100 Definition of terms.

(a) As used in this part:

(1) The term "Act" means the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611-621).

(2) The term "Attorney General" means the Attorney General of the United States.

(3) The term "Assistant Attorney General" means the Assistant Attorney General in charge of the Criminal Division, Department of Justice, Washington, D.C. 20530.

(4) The term "Secretary of State" means the Secretary of State of the United States.

(5) The term "Registration Unit" means the Registration Unit, Internal Security Section, Criminal Division, Department of Justice, Washington, D.C. 20530.

(6) The term "rules and regulations" includes the regulations in this part and all other rules and regulations prescribed by the Attorney General pursuant to the Act and all registration forms and instructions thereon which may be prescribed by the regulations in this part or by the Assistant Attorney General.

(7) The term "registrant" means any person who has filed a registration statement with the Registration Unit, pursuant to section 2(a) of the Act and § 5.3.

(8) Unless otherwise specified, the term "agent of a foreign principal" means an agent of a foreign principal required to register under the Act.

(9) The term "foreign principal" includes a person any of whose activities are directed or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal as that term is defined in section 1(b) of the Act.

(10) The term "initial statement means the statement required to be filed with the Attorney General under section 2(a) of the Act.

(11) The term "supplemental statement" means the supplement required to be filed with the Attorney General under section 2(b) of the Act at intervals of 6 months following the filing of the initial statement.

(12) The term "final statement" means the statement required to be filed with the Attorney General following the termination of the registrant's obligation to register.

(13) The term "short form registration statement" means the registration statement required to be filed by certain partners, officers, directors, associates, employees, and agents of a registrant.

(b) As used in the Act, the term "control" or any of its variants shall be deemed to include the possession or the exercise of the power, directly or indirectly, to determine the policies or the activities of a person, whether through the ownership of voting rights, by contract, or otherwise.

(c) The term "agency" as used in sections 1(c), 1(o), 1(q), 3(g), and 4(e) of the Act shall be deemed to refer to every unit in the executive and legislative branches of the Government of the United States, including committees of both Houses of Congress.

(d) The term "official" as used in sections 1(c), 1(o), 1(q), 3(g), and 4(e) of the Act shall be deemed to include Members and officers of both Houses of Congress as well as officials in the executive branch of the Government of the United States.

(e) The terms "formulating, adopting, or changing," as used in section 1(o) of the Act, shall be deemed to include any activity which seeks to maintain any existing domestic or foreign policy of the United States. They do not include making a routine inquiry of a Government official or employee concerning a current policy or seeking administrative action in a matter where such policy is not in question.

(f) The term "domestic or foreign policies of the United States," as used in sections 1 (o) and (p) of the Act, shall be deemed to relate to existing and proposed legislation, or legislative action generally; treaties; executive agreements, proclamations, and orders; decisions relating to or affecting departmental or agency policy, and the like.

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 523-73, 38 FR 18235, July 9, 1973]

§ 5.200 Registration.

(a) Registration under the Act is accomplished by the filing of an initial statement together with all the exhibits required by § 5.201 and the filing of a supplemental statement at intervals of 6 months for the duration of the principal-agent relationship requiring registration.

(b) The initial statement shall be filed on Form OBD-63.

(28 U.S.C. 509 and 510; 5 U.S.C. 301)

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 960-81, 46 FR 52355, Oct. 27, 1981]

§ 5.201 Exhibits.

(a) The following described exhibits are required to be filed for each foreign principal of the registrant:

(1) *Exhibit A.* This exhibit, which shall be filed on Form OBD-67, shall set forth the information required to be disclosed concerning each foreign principal.

(2) *Exhibit B.* This exhibit, which shall be filed on Form OBD-65, shall set forth the agreement or understanding between the registrant and each of his foreign principals as well as the nature and method of performance of such agreement or understanding and the existing or proposed activities engaged in or to be engaged in, including political activities, by the registrant for the foreign principal.

(b) Any change in the information furnished in Exhibit A or B shall be reported to the Registration Unit within 10 days of such change. The filing of a new exhibit may then be required by the Assistant Attorney General.

(c) Whenever the registrant is an association, corporation, organization, or any other combination of individuals, the following documents shall be filed as Exhibit C:

(1) A copy of the registrant's charter, articles of incorporation or association, or constitution, and a copy of its bylaws, and amendments thereto;

(2) A copy of every other instrument or document, and a statement of the terms and conditions of every oral agreement, relating to the organization, powers and purposes of the registrant.

(d) The requirement to file any of the documents described in paragraphs (c) (1) and (2) of this section may be wholly or partially waived upon written application by the registrant to the Assistant Attorney General setting forth fully the reasons why such waiver should be granted.

(e) Whenever a registrant, within the United States, receives or collects contributions, loans, money, or other things of value, as part of a fund-raising campaign, for or in the interests of his foreign principal, he shall file as Exhibit D a statement so captioned setting forth the amount of money or the value of the thing received or collected, the names and addresses of the persons from whom such money or thing of value was received or collected, and the amount of money or a description of the thing of value transmitted to the foreign principal as well as the manner and time of such transmission.

(28 U.S.C. 509 and 510; 5 U.S.C. 301)

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 523-73, 38 FR 18235, July 9, 1973; Order No. 960-81, 46 FR 52355, Oct. 27, 1981]

§ 5.202 Short form registration statement.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, each partner, officer, director, associate, employee, and agent of a registrant is required to file a registration statement under the Act. Unless the Assistant Attorney General specifically directs otherwise, this obligation may be satisfied by the filing of a short form registration statement.

(b) A partner, officer, director, associate, employee, or agent of a registrant who does not engage directly in activity in furtherance of the interests of the foreign principal is not required to file a short form registration statement.

(c) An employee or agent of a registrant whose services in furtherance of the interests of the foreign principal are rendered in a clerical, secretarial, or in a related or similar capacity, is not required to file a short form registration statement.

(d) Whenever the agent of a registrant is a partnership, association, corporation, or other combination of individuals, and such agent is not within the exemption of paragraph (b) of this section, only those partners, officers, directors, associates, and employees who engage directly in activity in furtherance of the interests of the registrant's foreign principal are required to file a short form registration statement.

(e) The short form registration statement shall be filed on Form OBD-66. Any change affecting the information furnished with respect to the nature of the services rendered by the person filing the statement, or the compensation he receives, shall require the filing of a new short form registration statement within 10 days after the occurrence of such change. There is no requirement to file exhibits or supplemental statements to a short form registration statement.

(28 U.S.C. 509 and 510; 5 U.S.C. 301)

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 960-81, 46 FR 52355, Oct. 27, 1981]

§ 5.203 Supplemental statement.

(a) Supplemental statements shall be filed on Form OBD-64.

(b) The obligation to file a supplemental statement at 6-month intervals during the agency relationship shall continue even though the registrant has not engaged during the period in any activity in the interests of his foreign principal.

(c) The time within which to file a supplemental statement may be extended for sufficient cause shown in a written application to the Assistant Attorney General.

(28 U.S.C. 509 and 510; 5 U.S.C. 301)

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 960-81, 46 FR 52355, Oct. 27, 1981]

§ 5.204 Amendments.

(a) An initial, supplemental, or final statement which is deemed deficient by the Assistant Attorney General must be amended upon his request. Such amendment shall be filed upon Form OBD-68 and shall identify the item of the statement to be amended.

(b) A change in the information furnished in an initial or supplemental statement under clauses (3), (4), (6), and (9) of section 2(a) of the Act shall be by amendment, unless the notice which is required to be given of such change under section 2(b) is deemed sufficient by the Assistant Attorney General.

(28 U.S.C. 509 and 510; 5 U.S.C. 301)

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 960-81, 46 FR 52355, Oct. 27, 1981]

§ 5.205 Termination of registration.

(a) A registrant shall, within 30 days after the termination of his obligation to register, file a final statement on Form OBD-64 with the Registration Unit for the final period of the agency relationship not covered by any previous statement.

(b) Registration under the Act shall be terminated upon the filing of a final statement, if the registrant has fully discharged all his obligations under the Act.

(c) A registrant whose activities on behalf of each of his foreign principals become confined to those for which an exemption under section 3 of the Act is available may file a final statement notwithstanding the continuance of the agency relationship with the foreign principals.

(28 U.S.C. 509 and 510; 5 U.S.C. 301)

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 523-73, 38 FR 18235, July 9, 1973; Order No. 960-81, 46 FR 52355, Oct. 27, 1981]

§ 5.206 Language and wording of registration statement.

(a) Except as provided in the next sentence, each statement, amendment, exhibit, or notice required to be filed under the Act shall be submitted in the English language. An exhibit may be filed even though it is in a foreign language if it is accompanied by an English translation certified under oath by the translator before a notary public, or other person authorized by law to administer oaths for general purposes, as a true and accurate translation.

(b) A statement, amendment, exhibit, or notice required to be filed under the Act should be typewritten, but will be accepted for filing if it is written legibly in ink.

(c) Copies of any document made by any of the duplicating processes may be filed pursuant to the Act if they are clear and legible.

(d) A response shall be made to every item on each pertinent form, unless a registrant is specifically instructed otherwise in the form. Whenever the item is inapplicable or the appropriate response to an item is "none," an express statement to that effect shall be made.

§ 5.207 Incorporation by reference.

(a) Each initial, supplemental, and final statement shall be complete in and of itself. Incorporation of information by reference to statements previously filed is not permissible.

(b) Whenever insufficient space is provided for response to any item in a form, reference shall be made in such space to a full insert page or pages on which the item number and inquiry shall be restated and a complete answer given. Inserts and riders of less than full page size should not be used.

§ 5.208 Disclosure of foreign principals.

A registrant who represents more than one foreign principal is required to list in the statements he files under the Act only those foreign principals for whom he is not entitled to claim exemption under section 3 of the Act.

§ 5.209 Information relating to employees.

A registrant shall list in the statements he files under the Act only those employees whose duties require them to engage directly in activities in furtherance of the interests of the foreign principal.

§ 5.210 Amount of detail required in information relating to registrant's activities and expenditures.

A statement is "detailed" within the meaning of clauses 6 and 8 of section 2 (a) of the Act when it has that degree of specificity necessary to permit meaningful public evaluation of each of the significant steps taken by a registrant to achieve the purposes of the agency relation.

§ 5.211 Sixty-day period to be covered in initial statement.

The 60-day period referred to in clauses 5, 7, and 8 of section 2(a) of the Act shall be measured from the time that a registrant has incurred an obligation to register and not from the time that he files his initial statement.

§ 5.300 Burden of establishing availability of exemption.

The burden of establishing the availability of an exemption from registration under the Act shall rest upon the person for whose benefit the exemption is claimed.

§ 5.301 Exemption under section 3(a) of the Act.

(a) A consular officer of a foreign government shall be considered duly accredited under section 3(a) of the Act whenever he has received formal recognition as such, whether provisionally or by exequatur, from the Secretary of State.

(b) The exemption provided by section 3(a) of the Act to a duly accredited diplomatic or consular officer is personal and does not include within its scope an office, bureau, or other entity.

§ 5.302 Exemptions under sections 3 (b) and (c) of the Act.

The exemptions provided by sections 3 (b) and (c) of the Act shall not be available to any person described therein unless he has filed with the Secretary of State a fully executed Notification of Status with a Foreign Government (Form D.S. 394).

§ 5.303 Exemption available to persons accredited to international organizations.

Persons designated by foreign governments as their representatives in or to an international organization, other than nationals of the United States, are exempt from registration under the Act in accordance with the provisions of the International Organizations Immunities Act, if they have been duly notified to and accepted by the Secretary of State as such representatives, officers, or employees, and if they engage exclusively in activities which are recognized as being within the scope of their official functions.

§ 5.304 Exemptions under section 3 (d) and (e) of the Act.

(a) As used in section 3(d), the term "trade or commerce" shall include the exchange, transfer, purchase, or sale of commodities, services, or property of any kind.

(b) For the purpose of section 3(d) of the Act, activities of an agent of a foreign principal as defined in section 1(c) of the Act, in furtherance of the bona fide trade or commerce of such foreign principal, shall be considered "private," even though the foreign principal is owned or controlled by a foreign government, so long as the activities do not directly promote the public or political interests of the foreign government.

(c) For the purpose of section 3(d) of the Act, the disclosure of the identity of the foreign person that is required under section 1(q) of the Act shall be made to each official of the U.S. Government with whom the activities are conducted. This disclosure shall be made to the Government official prior to his taking any action upon the business transacted. The burden of establishing that the required disclosure was made shall lie upon the person claiming the exemption.

(d) The exemption provided by section 3(e) of the Act shall not be available to any person described therein if he engages in political activities as defined in section 1(o) of the Act for or in the interests of his foreign principal.

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 463-71, 36 FR 12212, June 29, 1971]

§ 5.305 Exemption under section 3(f) of the Act.

The exemption provided by section 3(f) of the Act shall not be available unless the President has, by publication in the Federal Register, designated for the purpose of this section the country the defense of which he deems vital to the defense of the United States.

§ 5.306 Exemption under section 3(g) of the Act.

For the purpose of section 3(g) of the Act—

(a) Attempts to influence or persuade agency personnel or officials other than in the course of established agency proceedings, whether formal or informal, shall include only such attempts to influence or persuade with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party; and

(b) If an attorney engaged in legal representation of a foreign principal before an agency of the U.S. Government is not otherwise required to disclose the identity of his principal as a matter of established agency procedure, he must make such disclosure, in conformity with this section of the Act, to each of the agency's personnel or officials before whom and at the time his legal representation is undertaken. The burden of establishing that the required disclosure was made shall like upon the person claiming the exemption.

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 463-71, 36 FR 12212, June 29, 1971]

§ 5.400 Filing of political propaganda.

(a) The two copies of each item of political propaganda required to be filed with the Attorney General under section 4(a) of the Act shall be filed with the Registration Unit.

(b) Whenever two copies of an item of political propaganda have been filed pursuant to section 4(a) of the Act, an agent of a foreign principal shall not be required, in the event of further dissemination of the same material, to forward additional copies thereof to the Registration Unit.

(c) Unless specifically directed to do so by the Assistant Attorney General, a registrant is not required to file two copies of a motion picture containing political propaganda which he disseminates on behalf of his foreign principal, so long as he files monthly reports on its dissemination. In each such case this registrant shall submit to the Registration Unit either a film strip showing the label required by section 4(b) of the Act or an affidavit certifying that the required label has been made a part of the film.

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 523-73, 38 FR 18235, July 9, 1973; Order No. 568-74, 39 FR 18646, May 29, 1974]

§ 5.401 Dissemination report.

(a) A Dissemination Report shall be filed with the Registration Unit for each item of political propaganda that is transmitted, or caused to be transmitted, in the U.S. mails, or by any means or instrumentality of interstate or foreign commerce, by an agent of a foreign principal for or in the interests of any of his foreign principals.

(b) The Dissemination Report shall be filed on Form OBD-69.

(c) Except as provided in paragraph (d) of this section, a Dissemination Report shall be filed no later than 48 hours after the beginning of the transmittal of the political propaganda.

(d) Whenever transmittals of the same political propaganda are made over a period of time, a Dissemination Report may be filed monthly for as long as such transmittals continue.

(e) A Dissemination Report shall be complete in and of itself. Incorporation of information by reference to reports previously filed is not permissible.

(28 U.S.C. 509 and 510; 5 U.S.C. 301)

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 568-74, 39 FR 18646, May 29, 1974; Order No. 960-81, 46 FR 52355, Oct. 27, 1981]

§ 5.402 Labeling political propaganda.

(a) Within the meaning of this part, political propaganda shall be deemed labeled whenever it has been marked or stamped conspicuously at its beginning with a statement setting forth such information as is required under section 4(b) of the Act.

(b) An item of political propaganda which is required to be labeled under section 4(b) of the Act and which is in the form of prints shall be marked or stamped conspicuously at the beginning of such item with a statement in the language or languages used therein, setting forth such information as is required under section 4(b) of the Act.

(c) An item of political propaganda which is required to be labeled under section 4(b) of the Act but which is not in the form of prints shall be accompanied by a statement setting forth such information as is required under section 4(b) of the Act.

(d) Political propaganda as defined in section 1(j) of the Act which is televised or broadcast, or which is caused to be televised or broadcast, by an agent of a foreign principal, shall be introduced by a statement which is reasonably adapted to convey to the viewers or listeners thereof such information as is required under section 4(b) of the Act.

(e) An agent of a foreign principal who transmits or causes to be transmitted in the U.S. mails or by any means or instrumentality of interstate or foreign commerce a still or motion picture film which contains political propaganda as defined in section 1(j) of the Act shall insert at the beginning of such film a statement which is reasonably adapted to convey to the viewers thereof such information as is required under section 4(b) of the Act.

(f) For the purpose of section 4(e) of the Act, the statement that must preface or accompany political propaganda or a request for information shall be in writing.

§ 5.500 Maintenance of books and records.

(a) A registrant shall keep and preserve in accordance with the provisions of section 5 of the Act the following books and records:

(1) All correspondence, memoranda, cables, telegrams, teletype messages, and other written communications to and from all foreign principals and all other persons, relating to the registrant's activities on behalf of, or in the interest of any of his foreign principals.

(2) All correspondence, memoranda, cables, telegrams, teletype messages, and other written communications to and from all persons, other than foreign principals, relating to the registrant's political activity, or relating to political activity on the part of any of the registrant's foreign principals.

(3) Original copies of all written contracts between the registrant and any of his foreign principals.

(4) Records containing the names and addresses of persons to whom political propaganda has been transmitted.

(5) All bookkeeping and other financial records relating to the registrant's activities on behalf of any of his foreign principals, including canceled checks, bank statements, and records of income and disbursements, showing names and addresses of all persons who paid moneys to, or received moneys from, the registrant, the specific amounts so paid or received, and the date on which each item was paid or received.

(6) If the registrant is a corporation, partnership, association, or other combination of individuals, all minute books.

(7) Such books or records as will disclose the names and addresses of all employees and agents of the registrant, including persons no longer acting as such employees or agents.

(8) Such other books, records, and documents as are necessary properly to reflect the activities for which registration is required.

(b) The books and records listed in paragraph (a) of this section shall be kept and preserved in such manner as to render them readily accessible for inspection pursuant to section 5 of the Act.

(c) A registrant shall keep and preserve the books and records listed in paragraph (a) of this section for a period of 3 years following the termination of his registration under § 5.205.

(d) Upon good and sufficient cause shown in writing to the Assistant Attorney General, a registrant may be permitted to destroy books and records in support of the information furnished in an initial or supplemental statement which he filed 5 or more years prior to the date of his application to destroy.

§ 5.501 Inspection of books and records.

Officials of the Criminal Division and the Federal Bureau of Investigation are authorized under section 5 of the Act to inspect the books and records listed in § 5.500(a).

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 523-73, 38 FR 18235, July 9, 1973]

§ 5.600 Public examination of records.

Registration statements, Dissemination Reports, and copies of political propaganda filed under section 4(a) of the Act, shall be available for public examination at the Registration Unit on official business days, from 10 a.m. to 4 p.m.

§ 5.601 Copies of records available.

(a) Copies of registration statements and Dissemination Reports may be obtained from the Registration Unit upon payment of a fee at the rate of 10 cents per copy of each page of the material requested.

(b) Information as to the fee to be charged for copies of registration statements and Dissemination Reports and the time required for their preparation may be obtained upon request to the Registration Unit.

(c) Payment of the fee shall accompany an order for copies, and shall be made in cash, by U.S. postal money order, or by certified bank check made payable to the Treasurer of the United States. Postage stamps will not be accepted.

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 523-73, 38 FR 18235, July 9, 1973]

§ 5.800 Ten-day filing requirement.

The 10-day filing requirement provided by section 8(g) of the Act shall be deemed satisfied if the amendment to the registration statement is deposited in the U.S. mails no later than the 10th day of the period.

§ 5.801 Activity beyond 10-day period.

A registrant who has within the 10-day period filed an amendment to his registration statement pursuant to a Notice of Deficiency given under section 8(g) of the Act may continue to act as an agent of a foreign principal beyond this period unless he receives a Notice of Noncompliance from the Registration Unit.

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 523-73, 38 FR 18235, July 9, 1973]

PART 6—TRAFFIC IN CONTRABAND ARTICLES IN FEDERAL PENAL AND CORRECTIONAL INSTITUTIONS

§ 6.1 Consent of warden or superintendent required.

The introduction or attempt to introduce into or upon the grounds of any Federal penal or correctional institution or the taking or attempt to take or send therefrom anything whatsoever without the knowledge and consent of the warden or superintendent of such Federal penal or correctional institution is prohibited.

(Pub. L. 772, 80th Cong.; 18 U.S.C. 1791)

[13 FR 5660, Sept. 30, 1948]

Cross Reference: For Organization Statement, Bureau of Prisons, see Subpart Q of Part 0 of this Chapter.

PART 7—REWARDS FOR CAPTURE OF ESCAPED FEDERAL PRISONERS

Sec.
7.1 Standing offer of reward.
7.2 Amount of reward.
7.3 Eligibility for reward.
7.4 Procedure for claiming reward.
7.5 Certification.

Authority: 5 U.S.C. 301; 18 U.S.C. 3059, unless otherwise noted.

Source: 25 FR 2420, Mar. 23, 1960, unless otherwise noted.

Cross Reference: For Organization Statement, Bureau of Prisons, see Subpart Q of Part 0 of this Chapter.

§ 7.1 Standing offer of reward.

A standing offer of reward is made for the capture, or for assisting in, or furnishing information leading to, the capture, of an escaped Federal prisoner, in accordance with the conditions stated in this part.

§ 7.2 Amount of reward.

Within the discretion of the Warden or United States Marshal concerned, a reward not in excess of $200 may be granted for each capture of a prisoner and to more than one claimant, as determined applicable and appropriate. The Director of the Bureau of Prisons may in exceptional circumstances, as determined by him, grant rewards in excess of $200. Bodily harm, damage, violence, intimidation, terrorizing, risks, etc., will be considered in determining the appropriate amount of reward.

§ 7.3 Eligibility for reward.

A reward may be paid to any person, except an official or employee of the Department of Justice or a law-enforcement officer of the United States Government, who personally captures and surrenders an escaped Federal prisoner to proper officials, or who assists in the capture, of an escaped Federal prisoner.

§ 7.4 Procedure for claiming reward.

A person claiming a reward under this part shall present his claim, within six months from the date of the capture, in the form of a letter to the Warden or United States Marshal concerned. The letter shall state fully the facts and circumstances on which the claim is based, and shall include the name of each escapee captured and the time and place of the capture, and details as to how the arrest was made by the claimant or as to how assistance was rendered to others who made the arrest.

§ 7.5 Certification.

The claim letter required under § 7.4 shall contain the following certification immediately proceeding the signature of the claimant:

I am not an officer or employee of the Department of Justice or a law-enforcement officer of the United States Government.

PART 8—CONFISCATION OF WIRE OR ORAL COMMUNICATION INTERCEPTING DEVICES

Sec.
8.1 Seizure of intercepting devices.
8.2 Seized intercepting devices.

§ 8.1 Seizure of intercepting devices.

The Director, Associate Director, Assistant to the Director, Executive Assistant Directors, Assistant Directors, inspectors and agents of the Federal Bureau of Investigation are authorized to exercise the power and authority vested in the Attorney General (18 U.S.C. 2513) to make seizures of wire or oral communication intercepting devices.

(28 U.S.C. 509, 510; 5 U.S.C. 301)

[Order No. 960-81, 46 FR 52355, Oct. 27, 1981]

§ 8.2 Seized intercepting devices.

All wire or oral communication intercepting devices seized pursuant to section 2513 of Title 18, United States Code shall be held for or turned over to the U.S. Marshal for the district in which the seizure was made. Except for the power and authority conferred by § 8.1 and the powers described in the last sentence of this section, U.S. Marshals are, in accordance with section 2513 of Title 18, United States Code, authorized and designated as the officers to perform the various duties with respect to seizures and forfeitures of wire and oral communication intercepting devices under section 2513 of Title 18, United States Code which are comparable to the duties performed by collectors of customs or other persons with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws. The Assistant Attorney General in charge of the Criminal Division is designated as the officer authorized to take final action under section 2513 of Title 18, United States Code on claims for remission or mitigation of forfeitures, offers of payment for release of property, claims for award of compensation to an informer, offers in compromise and matters relating to bonds or other security.

(28 U.S.C. 509, 510; 5 U.S.C. 301; 18 U.S.C. 2513)

[Order No. 409-69, 34 FR 1557, Jan. 31, 1969]

PART 9—REMISSION OR MITIGATION OF CIVIL FORFEITURES

Sec.
9.1 Purpose and scope.
9.2 Definitions.
9.3 Procedure relating to judicial forfeitures.
9.4 Procedure relating to administrative narcotic forfeitures.
9.5 General administrative procedures.
9.6 Provisions applicable to particular situations.
9.7 Terms and conditions of remission.

AUTHORITY: 28 U.S.C. 509, 510; 5 U.S.C. 501, Reorganization Plan No. 1 of 1968.

§ 9.1 Purpose and scope.

The following definitions, regulations and criteria are designed to reflect the intent of Congress relative to the remission or mitigation of forfeiture of certain property as set out in section 1618 of Title 19, United States Code, and are applicable only to those civil forfeitures which arise under the Contraband Transportation Act, Comprehensive Drug Abuse Prevention and Control Act of 1970, customs laws, Federal Alcohol Administration Act and other laws relating to gambling, firearms, and liquor (except the Indian Liquor Laws), and which are assigned to the supervision of the Criminal Division or the Drug Enforcement Administration by the Attorney General or his duly authorized delegate (§§ 0.55(d), 0.100 of this chapter).

[Order No. 477-72, 37 FR 2768, Feb. 5, 1972, as amended by Order No. 520-73, 38 FR 18381, July 10, 1973]

§ 9.2 Definitions.

As used in this part:

(a) The term "Attorney General" means the Attorney General of the United States or his delegate.

(b) The term "related crime" means any crime similar in nature to that which gives rise to the seizure of property for forfeiture, for example, where property is seized for a violation of the Federal laws relating to liquor, a "related crime" would be any previous offense involving a violation of the Federal laws relating to liquor or the laws of any State or political subdivision thereof relating to liquor.

(c) The term "determining official" means the official who has the authority to grant or deny petitions for remission or mitigation of forfeitures of property incurred under the laws referred to in § 9.1.

(d) The terms "net equity," "net lien," and "net interest" mean the actual interest a petitioner has in property seized for forfeiture at the time a petition for remission or mitigation of forfeiture is granted by the determining official: *Provided, however,* That in computing a petitioner's actual interest the determining official shall make no allowances for unearned interest, finance charges, dealer's reserve, attorney's fees or other similar charges.

(e) The term "owner" means the person who holds primary and direct title to the property seized for forfeiture.

(f) The term "person" means an individual, partnership, corporation, joint business enterprise, or other entity capable of owning property.

(g) The term "petition" means the petition for remission or mitigation of forfeiture.

(h) The term "petitioner" means the person applying for remission or mitigation of the forfeiture of seized property.

(i) The term "property" means property of any kind capable of being owned or possessed.

(j) The term "record" means an arrest followed by a conviction, except that a single arrest and conviction and the expiration of any sentence imposed as a result of such conviction, all of which occurred more than 10 years prior to the date the petitioner acquired its interest in the seized property, shall not be considered a record: *Provided, however,* That two convictions shall always be considered a record regardless of when the convictions occurred: *And provided further,* That the determining official may, in his discretion, consider as constituting a record, an arrest or series of arrests to which the charge or charges were subsequently dismissed for reasons other than acquittal or lack of evidence.

(k) The term "reputation" means repute with a law enforcement agency or among law enforcement officers or in the community generally, including any pertinent neighborhood or other area.

(l) The term "violator" means the person whose use of the property in violation of the law subjected such property to seizure for forfeiture.

[Order No. 430-70, 35 FR 7013, May 21, 1970, as amended by Order No. 477-72, 37 FR 2768, Feb. 5, 1972]

§ 9.3 Procedure relating to judicial forfeitures.

(a) A petition for remission or mitigation of forfeiture shall be addressed to the Attorney General, and shall be sworn to by the petitioner, or by his counsel upon information and belief, and shall be submitted in triplicate to the U.S. attorney for the judicial district in which the property is seized.

(b) Upon receipt of a petition, the U.S. attorney shall direct the seizing agency to investigate the merits of the petition and to submit a report thereon to him. Upon receipt of such report, the U.S. attorney shall forward a copy thereof together with the petition and his recommendation as to allowance or denial of the petition to the Assistant Attorney General, Criminal Division.

(c) Upon receipt of a petition and report thereon, the Assistant Attorney General shall assign it to the appropriate section of the Criminal Division which shall prepare a report based upon the allegations of the petition and the report of the seizing agency. No hearing shall be held. Upon the basis of the report prepared in this section, the Chief of the section shall either grant the petition by remission or mitigation of the forfeiture or shall deny it.

(d) If the Chief of the section grants a petition or otherwise mitigates the forfeiture, he shall cause appropriate notices of such action to be mailed to the petitioner or his attorney and to the appropriate U.S. attorney. The U.S. attorney shall be advised of the terms and conditions, if any, upon which the remission or mitigation is granted and the procedures to be followed in order for the petitioner to obtain a release of the property, or, in the case of a chattel mortgagee and at the petitioner's option, to obtain his net equity in said property. The Chief of the section shall advise the petitioner or his attorney to confer with the U.S. attorney as to such terms and conditions.

(e) If the Chief of the section denies a petition, he shall cause appropriate notices of such action to be mailed to the petitioner or his attorney and to the appropriate U.S. attorney. Such notice shall specify the reason the petition was denied. The notice also shall advise the petitioner or his attorney that a request for reconsideration of the denial of the petition may be submitted to the Assistant Attorney General, Criminal Division, in accordance with paragraphs (j) through (m) of this section.

(f) A petition for restoration of the proceeds of sale or for value of forfeited property, if retained or delivered for official use of a Government agency, may be submitted in cases in which the petitioner: (1) Did not know of the seizure prior to the declaration or condemnation of forfeiture; and (2) was in such circumstances as prevented him from knowing thereof. Such a petition shall be submitted pursuant to paragraph (a) of this section and within 3 months from the date the property is sold or otherwise disposed of.

(g) The Assistant Attorney General shall not accept a petition in any case in which a similar petition has been administratively denied by the seizing agency prior to the referral of the case to the U.S. attorney for the institution of forfeiture proceedings.

(h) The Assistant Attorney General shall accept and the Chief of the section shall consider petitions submitted in judicial forfeiture proceedings under the Internal Revenue liquor laws only prior to the time a decree of forfeiture is entered. Thereafter, District Courts have exclusive jurisdiction over the rest.

(i) In all other forfeiture cases, the Assistant Attorney General shall accept and the Chief of the section shall consider petitions until the property is sold or placed in official use or otherwise disposed of according to law.

(j) Within 20 days from the date of the notice of the denial of a petition for remission or mitigation, a request for reconsideration of the denial, based on evidence recently developed or not previously considered, may be submitted to the Assistant Attorney General, Criminal Division, for referral to the appropriate Section Chief. The applicant shall simultaneously submit a copy to the appropriate U.S. attorney.

(k) Upon receipt of a copy of a request for reconsideration of the denial of a petition the U.S. attorney shall withhold further action in the case pending advice from the Assistant Attorney General, Criminal Division, of the action taken on the request by the appropriate Section Chief.

(l) If the U.S. attorney does not receive a copy of a request for reconsideration within the prescribed period he shall proceed with the forfeiture.

(m) Only one request for reconsideration of a denial of a petition shall be considered.

[Order No. 409-69, 34 FR 1557, Jan. 31, 1969]

§ 9.4 Procedure relating to administrative narcotic forfeitures.

(a) A petition for remission or mitigation of forfeiture of property seized for narcotic violations that is subject to administrative forfeiture (appraised value of $10,000 or less) shall be addressed to the Administrator of the Drug Enforcement Administration (DEA). Such a petition shall be filed in triplicate with the regional administrator of DEA for the judicial district in which the seizure occurred.

(b) Upon receipt of a petition for property subject to administrative forfeiture the regional administrator of DEA shall have an investigation of the petition conducted. The completed petition investigation and the recommendation of the regional director on the petition will be forwarded to the Administrator of DEA.

(c) Upon the receipt of a petition and a report thereon by the Administrator of DEA, he shall assign it to the Office of Chief Counsel where a ruling shall be made, based on the petition and the report of investigation. No hearing shall be held. The ruling on the petition shall be made by the Chief Counsel or Deputy Chief Counsel of DEA.

(d) Notice of the granting or the denial of a petition for property subject to administrative forfeiture shall be mailed to the petitioner or his attorney. If the petition is granted, the conditions of relief and the procedure to be followed in order to obtain the release of the property shall be set forth. If the petition is denied, the petitioner shall be advised of the reasons for such denial.

(e) A request for consideration of the denial may be submitted within 10 days from the date of the letter denying the petition. Such request shall be addressed to the Administrator of DEA for referral to the Office of the Chief Counsel and shall be based on evidence recently developed or not previously considered.

(f) Additional information concerning property subject to seizure for narcotic violations is contained in 21 CFR 316.71 through 316.81.

[Order No. 430-70, 35 FR 7013, May 21, 1970, as amended by Order No. 477-72, 37 FR 2768, Feb. 5, 1972; Order No. 520-73, 38 FR 18381, July 10, 1973; Order No. 845-79, 44 FR 48675, Aug. 20, 1979]

§ 9.5 General administrative procedures.

(a) Petitions shall be sworn and shall include the following information in clear and concise terms:

(1) A complete description of the property, including serial numbers, if any, and the date and place of seizure.

(2) The interest of the petitioner in the property, as owner, mortgagee or otherwise, to be supported by bills of sale, contracts, mortgages, or other satisfactory documentary evidence.

(3) The facts and circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify remission or mitigation.

(b) The Determining Official shall not consider whether the evidence is sufficient to support the forefeiture since the filing of a petition presumes a valid forfeiture. The determining official shall consider only whether the petitioner has satisfactorily established his good faith and his innocence and lack of knowledge of the violation which subjected the property to seizure and forfeiture, and whether there has been compliance with the standards hereinafter set forth.

(c) The determining official shall not remit or mitigate a forfeiture unless the petitioner:

(1) Establishes a valid, good faith interest in the seized property as owner or otherwise; and

(2) Establishes that he at no time had any knowledge or reason to believe that the property in which he claims an interest was being or would be used in a violation of the law.

(3) Establishes that he at no time had any knowledge or reason to believe that the owner had any record or reputation for violating laws of the United States or of any State for related crime.

[Order No. 430-70, 35 FR 7013, May 21, 1970, as amended by Order No. 477-72, 37 FR 2768, Feb. 5, 1972]

§ 9.6 Provisions applicable to particular situations.

(a) Mitigation: In addition to his discretionary authority to grant relief by way of complete remission of forfeiture, the determining official may, in the exercise of his discretion, mitigate forfeitures of seized property. This authority may be exercised in those cases where the petitioner has not met the minimum conditions precedent to remission but where there are present other extenuating circumstances indicating that some relief should be granted to avoid extreme hardship.

Mitigation may also be granted where the minimum standards for remission have been satisfied but the overall circumstances are such that, in the opinion of the determining official, complete relief is not warranted. Mitigation shall take the form of a money penalty imposed upon the petitioner in addition to any other sums chargeable as a condition to remission. This penalty is considered as an item of cost payable by the petitioner.

(b) Rival claimants: If the beneficial owner of property and the owner of a security interest in the same property each files a petition, and if both petitions are found to be meritorious, relief from a forfeiture shall be granted to the beneficial owner and the petition of the owner of the security interest shall be denied.

(c) Leasing agreements: (1) A person engaged in the business of renting property shall not be excused from establishing compliance with the requirements of § 9.5.

(2) A lessor who leases property on a long term basis with the right to sublease shall not be entitled to remission or mitigation of a forfeiture of such property unless his lessee would be entitled to such relief.

(d) Voluntary bailments: A petitioner who allows another to use his property without cost and who is not in the business of lending money secured by property or of renting property for profit, shall be granted remission or mitigation of forfeiture upon meeting the requirements of § 9.5.

(e) Straw purchase transactions: If a person purchases in his own name property for another who has a record or reputation for related crimes, and if a lienholder knows or has reason to believe that the purchaser of record is not the real purchaser, a petition filed by such a lienholder shall be denied unless the petitioner establishes compliance with the requirements of § 9.5 as to both the purchaser of record and the real purchaser. This rule shall also apply where money is borrowed on the security of property held in the name of the purchaser of record for the real purchaser.

(f) Notwithstanding the fact that a petitioner has satisfactorily established compliance with the administrative conditions applicable to his particular situation, the Determining Official may deny relief if there are unusual circumstances present which in his judgment provide reasonable grounds for concluding that remission or mitigation of the forfeiture would be inimical to the interests of justice.

[Order No. 430-70, 35 FR 7013, May 21, 1970, as amended by Order No. 477-72, 37 FR 2768, Feb. 5, 1972]

§ 9.7 Terms and conditions of remission.

(a) The terms and conditions of remission or mitigation of forfeitures in cases subject to judicial forfeiture proceedings (property appraised over $10,000 when seized or a claim and cost bond filed) shall, at a minimum, require that a petitioner pay the costs and expenses incident to the seizure of the property including any court costs and accrued storage charges. However, if the petitioner's interest in the property is derived from a lien thereon, the petitioner shall pay an amount equal to all costs and expenses incident to the seizure including any court costs and accrued storage charges or the amount by which the appraised value of the property exceeds the petitioner's net interest therein, whichever is greater. The appraised value at the time of seizure is used for the purposes of these rules.

(b) Where a complaint for forfeiture has been filed with the District Court, a lienholder shall also be required to furnish the U.S. attorney with: (1) An instrument executed by the registered owner and any other known claimant of an interest in the property, if they are not in default, releasing their interest in such property, or (2) if the registered owner or any other known claimant is in default, an agreement to save the Government, its agents and employees harmless from any and all claims which might result from the grant of remission.

(c) Alternatively, a lienholder may elect to permit the litigation to proceed to judgment. In that event, the court shall be advised that the Department has allowed the petition for remission of the forfeiture and shall be requested to order the property sold by the U.S. Marshal at public sale and the proceeds thereof to be distributed as follows:

(1) Payment to the petitioner of an amount equal to his net equity if the proceeds are sufficient or the net proceeds otherwise, after deducting from the petitioner's interest an amount equal to the Government's costs and expenses incident to the seizure, forfeiture and sale, including court costs and storage charges, if any;

(2) Payment of such costs and expenses;

(3) Payment of the balance remaining, if any, to the Government.

(d) If a complaint for forfeiture has not been filed, the petitioner, if he is a lienholder, in addition to paying an amount equal to all costs and expenses incident to the seizure, including any court costs and accrued storage charges, or an amount by which the appraised value of the property exceeds his net interest therein, whichever is greater, shall:

(1) Furnish an instrument executed by the registered owner and any other known claimant of an interest in the property releasing their interest in such property, or

(2) Furnish an agreement to hold the Government, its agents and employees harmless from any and all claims which might result from the grant of remission.

(e) The determining official may impose such other terms and conditions as may be appropriate.

(f) Upon compliance with the terms and conditions of remission or mitigation in cases subject to judicial forfeiture proceedings, the U.S. attorney shall take appropriate action to effect the release to the petitioner of the property involved and to dismiss the complaint if one has been filed or otherwise dispose of the matter by forfeiture, sale and distribution of the proceeds therefrom as set forth herein.

(g) In any case, if the owner of record or any other claimant wishes to contest the forfeiture, judicial condemnation of the property shall be consummated, the court shall be apprised of the granting and terms of the remission or mitigation by the Attorney General, and the court shall be requested to frame its decree of forfeiture accordingly.

(h) Where the owner of property elects not to comply with the conditions imposed upon the release of such property to said owner by way of relief, the custodian of such property may be authorized to sell it. From the proceeds of the sale the custodian shall deduct and retain for the account of the Government all costs incident to the seizure and forfeiture plus the costs of sale, and shall pay said owner the balance, if any.

(i) Where remission or mitigation is allowed to a person holding a security interest who is thereby eligible to have the property released to such person upon compliance with the terms and conditions of remission or mitigation, the property may nevertheless be retained by the Government for official use by an appropriately designated Department or Agency thereof upon payment by it to such person of an amount equal to such person's net equity, less an amount equal to the Government's costs and expenses incident to the seizure and forfeiture including court costs and storage charges, if any, and upon payment by it to the U.S. Marshal of an amount equal to such costs and expenses.

[Order No. 430-70, 35 FR 7013, May 21, 1970, as amended by Order No. 477-72, 37 FR 2769, Feb. 5, 1972; Order No. 845-79, 44 FR 48675, Aug. 20, 1979]

PART 9a—CONFISCATION OF PROPERTY, INCLUDING MONEY, USED IN AN ILLEGAL GAMBLING BUSINESS

Sec.

9a.1 Designation of officials having seizure authority.
9a.2 Designation of officials having custodial and disposition authority.
9a.3 Custody of seized property, inventory, and receipt.
9a.4 Appraisement of property subject to forfeiture.
9a.5 Notice of seizure and sale when value does not exceed $10,000; advertisement.
9a.6 Transfer of forfeited property to other districts for sale; destruction of forfeited property.
9a.7 Remission or mitigation of forfeitures.
9a.8 Compromise of claims.
9a.9 Award of compensation to informers.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 1955(d); 28 U.S.C. 509, 510.

SOURCE: Order No. 453-71, 36 FR 3416, Feb. 24, 1971, unless otherwise noted.

§ 9a.1 Designation of officials having seizure authority.

The Director, Associate Director, Assistants to the Director, Assistant Directors, inspectors, and agents of the Federal Bureau of Investigation are authorized to exercise the power and authority vested in the Attorney General by section 1955(d) of Title 18, United States Code, to make seizures of any property, including money used in an illegal gambling business.

§ 9a.2 Designation of officials having custodial and disposition authority.

Except for the power and authority conferred by § 9a.1, the powers described in the last sentence of this section, or as otherwise expressly provided herein, U.S. Marshals are, in accordance with section 1955(d) of Title 18, United States Code, authorized and designated as the officers to perform the various duties with respect to seizures and forfeitures of money and other property under section 1955(d) of Title 18, United States Code, which are comparable to the duties performed by collectors of customs or other persons with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws. The Assistant Attorney General in charge of the Criminal Division is designated as the officer authorized to take final action under section 1955(d) of Title 18, United States Code, on claims for award of compensation to informers, offers in compromise, and matters relating to bonds or other security.

§ 9a.3 Custody of seized property, inventory, and receipt.

All money and other property seized pursuant to section 1955(d) of Title 18, United States Code, shall be held for or turned over to the U.S. Marshal for the district in which the seizure was made when not held as evidence. An inventory shall be prepared of the property seized and a receipt given for it at the time of seizure or as soon thereafter as practicable.

§ 9a.4 Appraisement of property subject to forfeiture.

Seized property shall be appraised. The appraisement shall be the function of the U.S. Marshal having custody of the property. The value of an article seized shall be the price at which it or a similar article is fairly offered for sale at the time and place of appraisement.

§ 9a.5 Notice of seizure and sale when value does not exceed $10,000; advertisement.

The notice required by section 607, Tariff Act of 1930, as amended (19 U.S.C. 1607), of seizure and intention to forfeit and sell or otherwise dispose of property not exceeding $10,000 in value seized pursuant to section 1955(d) of Title 18, United States Code, shall describe the property seized; state the time, cause, and place of seizure; and state that any person desiring to claim the property must file with the U.S. Marshal within 20 days from the date of the first publication of the notice a claim to such property and a bond in the sum of $250, in default of which the property will be disposed of in accordance with law. The notice shall be published once each week for at least 3 successive weeks in a newspaper of general circulation in the judicial district in which the property was seized.

[Order No. 453-71, 36 FR 3416, Feb. 24, 1971, as amended by Order No. 960-81, 46 FR 52355, Oct. 27, 1981]

§ 9a.6 Transfer of forfeited property to other districts for sale; destruction of forfeited property.

(a) If the laws of a State in which an article of forfeited property is located prohibit the sale of such property or if the U.S. Marshal having custody thereof is of the opinion that the sale of forfeited property may be made more advantageously in another district, the property shall be moved to and sold in such other district as the Director, U.S. Marshals Service, may direct.

(b) If, after the summary forfeiture of property is completed, it appears that the proceeds of sale will not be sufficient to pay the costs of sale, the

U.S. Marshal may order the destruction of the property. Similarly, property forfeited under a decree of any court may be destroyed if it is provided in the decree of forfeiture that the property shall be delivered to the Attorney General for disposition in accordance with section 611, Tariff Act of 1930 (19 U.S.C. 1611). Also if the sale or use of any article is prohibited under any law of the United States or of any State, the Director, U.S. Marshals Service, may order it destroyed or remanufactured into an article that is not prohibited.

§ 9a.7 Remission or mitigation of forfeitures.

(a) The provisions of Part 9 of this chapter are applicable, insofar as practicable and appropriate, to petitions for the remission or mitigation of forfeitures resulting from the application of section 1955(d) of Title 18, United States Code.

(b) The duties imposed under § 9.4 of this chapter with respect to petitions for the remission or mitigation of administrative forfeiture of property of an appraised value of $10,000 or less shall, with respect to petitions for the remission or mitigation of forfeitures resulting from the application of section 1955(d) of Title 18, United States Code, be performed as follows:

Duties comparable to those of—	Will be performed by—
Administrator of the Drug Enforcement Administration	Assistant Attorney General in charge of the Criminal Division.
Regional Administrator of the Drug Enforcement Administration.	U.S. Marshal in whose district the property was seized unless otherwise directed by the Director, U.S. Marshals Service.
Office of the Chief Counsel, Drug Enforcement Administration	Special Litigation Section, Criminal Division, Department of Justice.
Chief Counsel or Deputy Chief Counsel, Drug Enforcement Administration.	Chief or Deputy Chief, Special Litigation Section, Criminal Division, Department of Justice.

The petition shall be addressed to the Assistant Attorney General in charge of the Criminal Division and be filed in triplicate with the U.S. Marshal in whose district the property was seized.

[Order No. 453-71, 36 FR 3416, Feb. 24, 1971, as amended by Order No. 520-73, 38 FR 18381, July 10, 1973; Order No. 585-74, 39 FR 43537, Dec. 16, 1974; Order No. 960-81, 46 FR 52355, Oct. 27, 1981]

§ 9a.8 Compromise of claims.

No offer pursuant to section 617, Tariff Act of 1930, as amended (19 U.S.C. 1617), in which a specific sum of money is tendered in compromise of a Government claim arising under section 1955(d) of Title 18, United States Code, will be considered by the Attorney General or his designee unless accompanied by a bank draft, certified check, or money order in the amount of the offer.

§ 9a.9 Award of compensation to informers.

A petition for the award of compensation to an informer under section 619, Tariff Act of 1930 (19 U.S.C. 1619), as amended, and section 1955(d) of Title 18, United States Code, will be forwarded to the Attorney General for action by his designee. The petition should be filed with or by the agent or official to whom the information was furnished. The petition will clearly identify the transaction to which it relates, contain evidence of the net amount recovered, and includes sufficient information and corroboration to permit a determination to be made concerning an award.

PART 10—REGISTRATION OF CERTAIN ORGANIZATIONS CARRYING ON ACTIVITIES WITHIN THE UNITED STATES

REGISTRATION STATEMENT

Sec.
10.1 Form of registration statement.
10.2 Language of registration statement.
10.3 Effect of acceptance of registration statement.
10.4 Date of filing.

BEST DOCUMENT AVAILABLE

Sec.
10.5 Incorporation of papers previously filed.
10.6 Necessity for further registration.
10.7 Cessation of activity.

SUPPLEMENTAL REGISTRATION STATEMENT

10.8 Information to be kept current.
10.9 Requirements for supplemental registration statement.

INSPECTION OF REGISTRATION STATEMENT

10.10 Public inspection.

AUTHORITY: Pub. L. 772, 80th Cong.; 18 U.S.C. 2386.

SOURCE: 6 FR 369, Jan. 15, 1941, unless otherwise noted.

CROSS REFERENCES: For regulations under the Foreign Agents Registration Act, see Part 5 of this Chapter.

For Organization Statement, Internal Security Section, see Subpart K of Part 0 of this chapter.

REGISTRATION STATEMENT

§ 10.1 Form of registration statement.

Every organization required to submit a registration statement[1] to the Attorney General for filing in compliance with the terms of section 2 of the act approved October 17, 1940, entitled, "An act to require the registration of certain organizations carrying on activities within the United States, and for other purposes" (Pub. L. 772, 80th Cong.; 18 U.S.C. 2386), and the rules and regulations issued pursuant thereto, shall submit such statement on such forms as are prescribed by the Attorney General. Every statement required to be filed with the Attorney General shall be subscribed under oath by all of the officers of the organization registering.

§ 10.2 Language of registration statement.

Registration statements must be in English if possible. If in a foreign language they must be accompanied by an English translation certified under oath by the translator, before a notary public or other person authorized by law to administer oaths for general purposes as a true and adequate translation. The statements, with the exception of signature, must be typewritten if practicable but will be accepted if written legibly in ink.

§ 10.3 Effect of acceptance of registration statement.

Acceptance by the Attorney General of a registration statement submitted for filing shall not necessarily signify a full compliance with the said act on the part of the registrant, and such acceptance shall not preclude the Attorney General from seeking such additional information as he deems necessary under the requirements of the said act, and shall not preclude prosecution as provided for in the said act for a false statement of a material fact, or the willful omission of a material fact required to be stated therein, or necessary to make the statements made not misleading.

§ 10.4 Date of filing.

The date on which a registration statement properly executed is accepted by the Attorney General for filing shall be considered the date of the filing of such registration statement pursuant to the said act. All statements must be filed not later than thirty days after January 15, 1941.

§ 10.5 Incorporation of papers previously filed.

Papers and documents already filed with the Attorney General pursuant to the said act and regulations issued pursuant thereto may be incorporated by reference in any registration statement subsequently submitted to the Attorney General for filing, provided such papers and documents are adequately identified in the registration statement in which they are incorporated by reference.

§ 10.6 Necessity for further registration.

The filing of a registration statement with the Attorney General as required by the act shall not operate to remove the necessity for filing a registration statement with the Attorney General as required by the act of June 8, 1938, as amended, entitled "An act to require the registration of certain persons employed by agencies to disseminate propaganda in the United

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[1] Filed as a part of the original document. Copies may be obtained from the Department of Justice.

States and for other purposes" (52 Stat. 631, 56 Stat. 248; 22 U.S.C. 611), or for filing a notification statement with the Secretary of State as required by the act of June 15, 1917 (40 Stat. 226).

[13 FR 8292, Dec. 24, 1948]

§ 10.7 Cessation of activity.

The chief officer or other officer of the registrant organization must notify the Attorney General promptly upon the cessation of the activity of the organization, its branches, chapters, or affiliates by virtue of which registration has been required pursuant to the act.

SUPPLEMENTAL REGISTRATION STATEMENT

§ 10.8 Information to be kept current.

A supplemental statement must be filed with the Attorney General within thirty days after the expiration of each period of six months succeeding the original filing of a registration statement. Each supplemental statement must contain information and documents as may be necessary to make information and documents previously filed accurate and current with respect to the preceding six months' period.

§ 10.9 Requirements for supplemental registration statement.

The rules and regulations in this part with respect to registration statements submitted to the Attorney General under section 2 of the said act shall apply with equal force and effect to supplemental registration statements required thereunder to be filed with the Attorney General.

INSPECTION OF REGISTRATION STATEMENT

§ 10.10 Public inspection.

Registration statements filed with the Attorney General pursuant to the said act shall be available for public inspection in the Department of Justice, Washington, D.C., from 10 a.m. to 4 p.m. on each official business day.

[13 FR 8292, Dec. 24, 1948]

PART 12—REGISTRATION OF CERTAIN PERSONS HAVING KNOWLEDGE OF FOREIGN ESPIONAGE, COUNTERESPIONAGE, OR SABOTAGE MATTERS UNDER THE ACT OF AUGUST 1, 1956

Sec.
12.1 Definitions.
12.2 Administration of act.
12.3 Prior registration with the Foreign Agents Registration Unit.
12.4 Inquiries concerning application of act.
12.20 Filing of registration statement.
12.21 Time within which registration statement must be filed.
12.22 Material contents of registration statement.
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12.24 Forms.
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12.40 Public examination.
12.41 Photocopies.
12.70 Partial compliance not deemed compliance.

AUTHORITY: Sec. 5, 70 Stat. 900; 50 US.C. 854.

SOURCE: 21 FR 5928, Aug. 8, 1956, unless otherwise noted.

CROSS REFERENCE: For Organization Statement, Internal Security Section, see Subpart K of Part 0 of this chapter.

§ 12.1 Definitions.

As used in this part, unless the context otherwise requires:

(a) The term "act" means the act of August 1, 1956, Pub. L. 893, 84th Congress, 2d Session, requiring the registration of certain persons who have knowledge of, or have received instruction or assignment in the espionage, counterespionage, or sabotage service or tactics of a foreign government or foreign political party.

(b) The term "Attorney General" means the Attorney General of the United States.

(c) The term "rules and regulations" refers to all rules, regulations, registration forms, and instruction to forms made and prescribed by the Attorney General pursuant to the act.

(d) The term "registration statement" means the registration required to be filed with the Attorney General under section 2 of the act.

(e) The term "registrant" means the person by whom a registration statement is filed pursuant to the provisions of the act.

§ 12.2 Administration of act.

The administration of the act is assigned to the Registration Unit of the Internal Security Section, Criminal Division, Department of Justice. Communications with respect to the act shall be addressed to the Registration Unit Internal Security Section, Criminal Division, Department of Justice, Washington, D.C. 20530. Copies of the act, the regulations contained in this part, including the forms mentioned therein, may be obtained upon request without charge.

[Order No. 524-73, 38 FR 18235, July 9, 1973]

§ 12.3 Prior registration with the Foreign Agents Registration Unit.

No person who has filed a registration statement under the terms of the Foreign Agents Registration Act of 1938, as amended by section 20(a) of the Internal Security Act of 1950, shall be required to file a registration statement under the act, unless otherwise determined by the Chief, Registration Unit.

[21 FR 5928, Aug. 8, 1956, as amended by Order No. 524-73, 38 FR 18235, July 9, 1973; Order No. 960-81, 46 FR 52355, Oct. 27, 1981]

§ 12.4 Inquiries concerning application of act.

Inquiries concerning the application of the act must be accompanied by a detailed statement of all facts necessary for a determination of the question submitted, including the identity of the person on whose behalf the inquiry is made, the facts which may bring such person within the registration provisions of the act, and the identity of the foreign government or foreign political party concerned.

§ 12.20 Filing of registration statement.

Registration statements shall be filed in duplicate with the Registration Unit, Internal Security Section, Criminal Division, Department of Justice, Washington, D.C. 20530. Filing may be made in person or by mail, and shall be deemed to have taken place upon the receipt thereof by the Registration Unit.

[Order No. 524-73, 38 FR 18235, July 9, 1973]

§ 12.21 Time within which registration statement must be filed.

Every person who is or becomes subject to the registration provisions of the act after its effective date shall file a registration statement within fifteen days after the obligation to register arises.

§ 12.22 Material contents of registration statement.

The registration statement shall include the following, all of which shall be regarded as material for the purposes of the act:

(a) The registrant's name, principal business address, and all other business addresses in the United States or elsewhere, and all residence addresses.

(b) The registrant's citizenship status and how such status was acquired.

(c) A detailed statement setting forth the nature of the registrant's knowledge of the espionage, counterespionage, or sabotage service or tactics of a foreign government or foreign political party, and the manner in which, place where, and date when such knowledge was obtained.

(d) A detailed statement as to any instruction or training received by the registrant in the espionage, counterespionage, or sabotage service or tactics of a foreign government or foreign political party, including a description of the type of instruction or training received, a description of any courses taken, the dates when such courses commenced and when they ceased, and the name and official title of the instructor or instructors under whose supervision the courses were received as well as the name and location of schools and other institutions attended, the dates of such attendance, and the names of the directors of the schools and institutions attended.

(e) A detailed statement describing any assignment received in the espionage, counterespionage, or sabotage service or tactics of a foreign government or foreign political party, including the type of assignment, the date when each assignment began, the date of completion of each assignment, name and title of the person or persons under whose supervision the assignment was executed, and a complete description of the nature of the assignment and the execution thereof.

(f) A detailed statement of any relationship which may exist at the time of registration, other than through employment, between the registrant and any foreign government or foreign political party.

(g) Such other statements, information, or documents pertinent to the purposes and objectives of the act as the Attorney General, having due regard for the national security and the public interest, may require by this part or amendments thereto.

§ 12.23 Deficient registration statement.

A registration statement which is determined to be incomplete, inaccurate, misleading, or false, by the Chief Registration Unit, may be returned by him to the registrant as being unacceptable for filing under the terms of the act.

[21 FR 5928, Aug. 8, 1956, as amended by Order No. 524-73, 38 FR 18235, July 9, 1973]

§ 12.24 Forms.

(a) Every person required to register under the act shall file a registration statement on Form GA-1, and such other forms as may from time to time be prescribed by the Attorney General.

(b) Matter contained in any part of the registration statement or other document may not be incorporated by reference as answer, or partial answer, to any other item in the registration statement required to be filed under the act.

(c) Except as specifically provided otherwise, if any item on the form is inapplicable, or the answer is "None," an express statement to such effect shall be made.

(d) Every statement, amendment, and every duplicate thereof, shall be executed under oath and shall be sworn to before a notary public or other officer authorized to administer oaths.

(e) A registration statement or amendment thereof required to be filed shall, if possible, be typewritten, but will be regarded as in substantial compliance with this regulation if written legibly in black ink.

(f) Riders shall not be used. If the space on the registration statement or other form is insufficient for any answer, reference shall be made in the appropriate space to a full insert page or pages on which the item number and item shall be restated and the complete answer given.

§ 12.25 Amended registration statement.

(a) An amended registration statement may be required by the Chief, Registration Unit, of any person subject to the registration provisions of the act whose original registration statement filed pursuant thereto is deemed to be incomplete, inaccurate, false, or misleading.

(b) Amendments shall conform in all respects to the regulations herein prescribed governing execution and filing of original registration statements.

(c) Amendments shall in every case make appropriate reference by number or otherwise to the items in original registration statements to which they relate.

(d) Amendments shall be deemed to have been filed upon the receipt thereof by the Registration Unit.

(e) Failure of the Chief, Registration Unit, to request any person described in section 2 of the act to file an amended registration statement shall not preclude prosecution of such person for a wilfully false statement of a material fact, the wilful omission of a material fact, or the wilful omission of a material fact necessary to make the statements therein not misleading, in an original registration statement.

[21 FR 5928, Aug. 8, 1956, as amended by Order No. 524-73, 38 FR 18235, July 9, 1973]

§ 12.30 Burden of establishing availability of exemptions.

In all matters pertaining to exemptions, the burden of establishing the availability of the exemption shall rest with the person for whose benefit the exemption is claimed.

§ 12.40 Public examination.

Registration statements shall be available for public examination at the offices of the Registration Unit, Department of Justice, Washington, D.C., from 10:00 a.m. to 4:00 p.m. on each official business day, except to the extent that the Attorney General having due regard for national security and public interest may withdraw such statements from public examination.

[Order No. 524-73, 38 FR 18235, July 9, 1973]

§ 12.41 Photocopies.

(a) Photocopies of registration statements filed in accordance with section 2 of the act are available to the public upon payment of fifty cents per photocopy of each page, whether several copies of a single original page or one or more copies of several original pages are ordered.

(b) Estimates as to prices for photocopies and the time required for their preparation will be furnished upon request addressed to the Registration Unit, Internal Security Section, Criminal Division, Department of Justice, Washington, D.C. 20530.

(c) Payment shall accompany the order for photocopies and shall be made in cash, or by United States money order, or by certified bank check payable to the Treasurer of the United States. Postage stamps will not be accepted.

[21 FR 5928, Aug. 8, 1956, as amended by Order No. 524-73, 38 FR 18235, July 9, 1973]

§ 12.70 Partial compliance not deemed compliance.

The fact that a registration statement has been filed shall not necessarily be deemed a full compliance with the act on the part of the registrant; nor shall it preclude prosecution, as provided for in the act, for willful failure to file a registration statement, or for a willfully false statement of a material fact therein, or for the willful omission of a material fact required to be stated therein.

PART 13—ATOMIC WEAPONS AND SPECIAL NUCLEAR MATERIALS REWARDS REGULATIONS

Sec.
13.1 Purpose.
13.2 Policy.
13.3 Definitions.
13.4 Procedures: Responsibilities of the Attorney General.
13.5 Procedures: Responsibilities of the Intra-departmental Committee.
13.6 Criteria for reward.
13.7 Judicial review.

AUTHORITY: 50 U.S.C. 47d.

SOURCE: Order No. 974-82, 47 FR 11516, Mar. 17, 1982, unless otherwise noted.

§ 13.1 Purpose.

This part implements the responsibility given to the Attorney General under the Atomic Weapons and Special Nuclear Materials Rewards Act, 50 U.S.C. 47a-47f, for determining what persons are entitled to a reward for furnishing certain original information to the United States pertaining to atomic weapons and special nuclear material.

§ 13.2 Policy.

This program is intended to reward the provision of original information regarding situations involving an illegal diversion, an attempted illegal diversion, or a conspiracy to divert special nuclear material or atomic weapons. The broad scope of this program is to help guard against the loss or diversion of such material and to prevent any use or disposition thereof inimical to the common defense and security.

§ 13.3 Definitions.

"Atomic energy" means all forms of energy released in the course of nuclear fission or nuclear transformation.

"Atomic weapon" means any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principal purpose of which is for use as, or for development of, a weapon, a weapon prototype, or a weapon test device.

"Original information" means information first supplied to the Federal government by the applicant, which was created or compiled through his own skill and judgment.

"Special nuclear material" means plutonium, or uranium enriched in the isotope 233 or in the isotope 235, or any other material which is found to be special nuclear material pursuant to the provisions of the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et seq.*

"United States," when used in a geographical sense, includes Puerto Rico, all Territories and possessions of the United States and the Canal Zone except in § 13.4(a)(4). In § 13.4(a)(4), "United States," when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States.

§ 13.4 Procedures: Responsibilities of the Attorney General.

When a submission is made to the Department of Justice for a reward under the Atomic Weapons and Special Nuclear Materials Rewards Act, the Attorney General shall:

(a) Refer such submission for review to an intra-departmental committee composed of the Assistant Attorneys General for the Land and Natural Resources Division, the Criminal Division, and the Office of Legal Counsel or their delegates;

(b) Review the proposed finding of the review committee and determine whether a reward is justified and the amount of same;

(c) Secure the approval of the President for any reward over $50,000;

(d) Jointly determine (along with the Secretary of State and the Director of Central Intelligence), if the award is to go to an alien, whether the entry of such alien into the United States is in the public interest and whether that alien and members of his immediate family may receive immigrant visas and be admitted to the United States for permanent residence, notwithstanding the requirements of the Immigration and Nationality Act;

(e) Notify any person claiming an award of the determination regarding the claim and the amount of the reward, if any. If no reward is determined to be justified, state the reasons, consistent with national security, for the denial;

(f) Certify and transmit, along with the approval of the President if necessary, any award to be made to the Director of Central Intelligence for payment out of funds appropriated or available for the administration of the National Security Act of 1947, as amended, 50 U.S.C. 401 *et seq;*

(g) Not certify any amount over $500,000.

§ 13.5 Procedures: Responsibility of the Intra-departmental Committee.

When the Attorney General refers a submission for a reward to the intradepartmental committee, this committee:

(a) Shall consult with the Nuclear Regulatory Commission and the Department of Energy regarding the reward;

(b) May consult with the Central Intelligence Agency and any other departments or agencies it deems appropriate to aid in the determination of whether a reward should be given and the proper amount of the reward;

(c) May hold hearings for the purpose of securing and evaluating information; a full hearing on the record with oral presentation and cross-examination is not required;

(d) Shall determine whether the information submitted fits one or more of the rewardable categories outlined in § 13.6;

(e) Shall determine whether the applicant is eligible for the reward. Federal employees and military personnel whose duties include investigating activities covered by this Act are not eligible for a reward for information acquired in the course of their investigation;

(f) Shall submit to the Attorney General a proposed finding as to eligibility and a recommendation for the amount of the reward within 60 days of the date of referral from the Attorney General, unless good cause is shown for extending the time of review.

§ 13.6 Criteria for reward.

(a) Information provided by any person to the United States for a reward under the Atomic Weapons and Special Nuclear Materials Rewards Act must be original, and must concern the unlawful:

(1) Introduction, manufacture or acquisition, or

(2) Attempted introduction, manufacture or acquisition of, or

(3) Export or attempt to export, or

(4) Conspiracy to introduce, manufacture, acquire or export special nuclear material or atomic weapons, or

(5) Loss, diversion or disposal or special nuclear material or atomic weapons.

(b) The amount of the reward shall depend on:

(1) The amount of the material recovered or potentially recoverable, and the role the information played in the recovery, and

(2) The danger the material posed or poses to the common defense and security or public health and welfare, and

(3) The difficulty in ascertaining the information submitted to claim the reward, and the quality of the information, and

(4) Any other considerations which the Attorney General or the intra-departmental committee deems necessary or helpful to the individual determination.

§ 13.7 Judicial review.

The decision of the Attorney General is final and conclusive and no court shall have power or jurisdiction to review it.

PART 14—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

Sec.
14.1 Scope of regulations.
14.2 Administrative claim; when presented.
14.3 Administrative claim; who may file.
14.4 Administrative claims; evidence and information to be submitted.
14.5 Review by legal officers.
14.6 Limitation on agency authority.
14.7 Referral to Department of Justice.
14.8 Investigation and examination.
14.9 Final denial of claim.
14.10 Action on approved claims.
14.11 Supplementing regulations.

AUTHORITY: Sec. 1, 80 Stat. 306; 28 U.S.C. 2672, unless otherwise noted.

SOURCE: Order No. 371-66, 31 FR 16616, Dec. 29, 1966, unless otherwise noted.

§ 14.1 Scope of regulations.

These regulations shall apply only to claims asserted under the Federal Tort Claims Act. The terms "Federal agency" and "agency", as used in this part, include the executive departments, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States but do not include any contractor with the United States.

(28 U.S.C. 509 and 510; 5 U.S.C. 301)

[Order No. 960-81, 46 FR 52355, Oct. 27, 1981]

§ 14.2 Administrative claim; when presented.

(a) For purposes of the provisions of 28 U.S.C. 2401(b) and 2672, a claim shall be deemed to have been presented when a Federal agency receives from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury, or death alleged to have occurred by reason of the incident.

(b)(1) A claim shall be presented to the Federal agency whose activities gave rise to the claim. When a claim is presented to any other Federal agency, that agency shall transfer it forthwith to the appropriate agency, if the proper agency can be identified from the claim, and advise the claimant of the transfer. If transfer is not feasible the claim shall be returned to the claimant. The fact of transfer shall not, in itself, preclude further transfer, return of the claim to the claimant or other appropriate disposition of the claim. A claim shall be presented as required by 28 U.S.C. 2401(b) as of the date it is received by the appropriate agency.

(2) When more than one Federal agency is or may be involved in the events giving rise to the claim, an agency with which the claim is filed shall contact all other affected agen-

cies in order to designate the single agency which will thereafter investigate and decide the merits of the claim. In the event that an agreed upon designation cannot be made by the affected agencies, the Department of Justice shall be consulted and will thereafter designate an agency to investigate and decide the merits of the claim. Once a determination has been made, the designated agency shall notify the claimant that all future correspondence concerning the claim shall be directed to that Federal agency. All involved Federal agencies may agree either to conduct their own administrative reviews and to coordinate the results or to have the investigations conducted by the designated Federal agency, but, in either event, the designated Federal agency will be responsible for the final determination of the claim.

(3) A claimant presenting a claim arising from an incident to more than one agency should identify each agency to which the claim is submitted at the time each claim is presented. Where a claim arising from an incident is presented to more than one Federal agency without any indication that more than one agency is involved, and any one of the concerned Federal agencies takes final action on that claim, the final action thus taken is conclusive on the claims presented to the other agencies in regard to the time required for filing suit set forth in 28 U.S.C. 2401(b). However, if a second involved Federal agency subsequently desires to take further action with a view towards settling the claim the second Federal agency may treat the matter as a request for reconsideration of the final denial under 28 CFR 14.9(b), unless suit has been filed in the interim, and so advise the claimant.

(4) If, after an agency final denial, the claimant files a claim arising out of the same incident with a different Federal agency, the new submission of the claim will not toll the requirement of 28 U.S.C. 2401(b) that suit must be filed within six months of the final denial by the first agency, unless the second agency specifically and explicitly treats the second submission as a request for reconsideration under 28 CFR 14.9(b) and so advises the claimant.

(c) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the agency shall have six months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until six months after the filing of an amendment.

(28 U.S.C. 509 and 510; 5 U.S.C. 301)

[Order No. 870-79, 45 FR 2650, Jan. 14, 1980, as amended by Order No. 960-81, 46 FR 52355, Oct. 27, 1981]

§ 14.3 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property, his duly authorized agent or legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decendent's estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 14.4 Administrative claims; evidence and information to be submitted.

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by the agency or another Federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request provided that he has, upon request, furnished the report referred to in the first sentence of this paragraph and has made or agrees to make available to the agency any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from employment, whether he is a full or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amounts of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

§ 14.5 Review by legal officers.

The authority to adjust, determine, compromise, and settle a claim under the provisions of section 2672 of Title 28, United States Code, shall, if the amount of a proposed compromise, settlement, or award exceeds $5,000, be exercised by the head of an agency or his designee only after review by a legal officer of the agency.

(28 U.S.C. 509 and 510; 5 U.S.C. 301)

[Order No. 371-66, 31 FR 16616, Dec. 29, 1966, as amended by Order No. 757-77, 42 FR 62001, Dec. 8, 1977; Order No. 960-81, 46 FR 52355, Oct. 27, 1981]

§ 14.6 Limitation on agency authority.

(a) An award, compromise, or settlement of a claim by an agency under the provisions of section 2672 of Title 28, United States Code, in excess of $25,000 shall be effected only with the prior written approval of the Attorney General or his designee. For the purposes of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised, or settled by an agency under the provisions of section 2672 of Title 28, United States Code, only after consultation with the Department of Justice when, in the opinion of the agency:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and the agency is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) An administrative claim may be adjusted, determined, compromised, or settled by an agency under the provisions of section 2672 of Title 28, United States Code, only after consultation with the Department of Justice when the agency is informed or is otherwise aware that the United States or an employee, agent, or cost-plus contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

§ 14.7 Referral to Department of Justice.

When Department of Justice approval or consultation is required under § 14.6, or the advice of the Department of Justice is otherwise to be requested, the referral or request of the Federal agency shall be directed to the Assistant Attorney General, Civil Division, Department of Justice, in writing and shall contain: (a) A short and concise statement of the facts and of the reasons for the referral or request, (b) copies of relevant portions of the agency's claim file, and (c) a statement of the recommendations or views of the agency. Such referrals or requests to the Department of Justice may be made at any time after presentment of a claim to the Federal agency.

§ 14.8 Investigation and examination.

A Federal agency may request any other Federal agency to investigate a claim filed under section 2672, Title 28, United States Code, or to conduct a physical examination of a claimant and provide a report of the physical examination. Compliance with such requests may be conditioned by a Federal agency upon reimbursement by the requesting agency of the expense of investigation or examination where reimbursement is authorized, as well as where it is required, by statute or regulation.

§ 14.9 Final denial of claim.

(a) Final denial of an administrative claim shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the agency action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

(b) Prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 U.S.C.

2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request with the agency for reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration the agency shall have 6 months from the date of filing in which to make a final disposition of the claim and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of a request for reconsideration. Final agency action on a request for reconsideration shall be effected in accordance with the provisions of paragraph (a) of this section.

[Order No. 371-66, 31 FR 16616, Dec. 29, 1966, as amended by Order No. 422-69, 35 FR 315, Jan. 8, 1970]

§ 14.10 Action on approved claims.

(a) Any award, compromise, or settlement in an amount of $2,500 or less made pursuant to the provisions of section 2672 of Title 28, United States Code, shall be paid by the head of the Federal agency concerned out of the appropriations available to that agency. Payment of an award, compromise, or settlement in excess of $2,500 shall be obtained by the agency by forwarding Standard Form 1145 to the Claims Division, General Accounting Office. When an award is in excess of $25,000, Standard Form 1145 must be accompanied by evidence that the award, compromise, or settlement has been approved by the Attorney General or his designee. When the use of Standard Form 1145 is required, it shall be executed by the claimant or it shall be accompanied by either a claims settlement agreement or a Standard Form 95 executed by the claimant. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his attorney as payees; the check shall be delivered to the attorney, whose address shall appear on the voucher.

(b) Acceptance by the claimant, his agent, or legal representative, of any award, compromise or settlement made pursuant to the provisions of section 2672 or 2677 of Title 28, United States Code, shall be final and conclusive on the claimant, his agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

[Order No. 371-66, 31 FR 16616, Dec. 29, 1966, as amended by Order No. 834-79, 44 FR 33399, June 11, 1979]

§ 14.11 Supplementing regulations.

Each agency is authorized to issue regulations and establish procedures consistent with the regulations in this part.

PART 15—DEFENSE OF CERTAIN SUITS AGAINST FEDERAL EMPLOYEES, AND CERTIFICATION AND DEFENSE OF CERTAIN SUITS AGAINST PROGRAM PARTICIPANTS UNDER THE NATIONAL SWINE FLU IMMUNIZATION PROGRAM OF 1976

Sec.
15.1 Expeditious delivery of process and pleadings.
15.2 Providing data bearing upon scope of employment or program participant status.
15.3 Removal and defense of suits.
Appendix—Delegation of Authority of the Assistant Attorney General of the Civil Division to Make Certifications, to Withdraw Certifications, and to File Appropriate Motions

Authority: 5 U.S.C. 301, 10 U.S.C. 1089, 22 U.S.C. 817, 28 U.S.C. 509, 510 and 2679, 38 U.S.C. 4116, and 42 U.S.C. 233, 247b and 2458a.

Cross Reference: For Organization Statement, Civil Division, see Subpart I of Part 0 of this Chapter.

§ 15.1 Expeditious delivery of process and pleadings.

(a) Any Federal employee against whom a civil action or proceeding is brought for damages to property, or for personal injury or death, on account of the employee's operation of a motor vehicle in the scope of his office or employment with the Federal Government or on account of the employee's performance of medical care, treatment, or investigation in the scope of his office or employment with the Public Health Service or the Veterans Administration Department of Medicine and Surgery, the Department of State (including the Agency for International Development), the Armed Forces, the Department of Defense, the Central Intelligence Agency, or the National Aeronautics and Space Administration shall promptly deliver all process and pleadings served upon the employee, or an attested true copy thereof, to the employee's immediate superior or to whoever is designated by the head of the employee's department or agency to receive such papers. If the action is brought against an employee's estate this procedure shall apply to the employee's personal representative. In addition, upon the employee's receipt of such process or pleadings, or any prior information regarding the commencement of such a civil action or proceeding, he shall immediately so advise his superior or the designee thereof by telephone or telegraph. The superior or designee shall furnish the United States Attorney for the district embracing the place wherein the action or proceeding is brought and the Branch Director of the Torts Branch, Civil Division, Department of Justice, information concerning the commencement of such action or proceeding, and copies of all process and pleadings therein.

(b) Any program participant as that term is defined in 42 U.S.C. 247b (k) (2) (B) against whom a civil action or proceeding is brought for damages for personal injury or wrongful death on account of the administration of swine flu vaccine under the National Swine Flu Immunization Program of 1976 (or the personal representative or successor of such program participant, if the action is brought against the estate or successor of such program participant) shall promptly deliver all process and pleadings served upon such program participant, or an attested true copy thereof, to the Branch Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, D.C. 20530, and to the Department Claims Officer, Office of the General Counsel, Department of Health, Education and Welfare, Washington, D.C. 20201. The Branch Director shall promptly furnish copies of the papers to the United States Attorney for the district embracing the place wherein the action or proceeding is brought.

[42 FR 15409, Mar. 22, 1977; 42 FR 17111, Mar. 31, 1977, as amended at 46 FR 52355, Oct. 27, 1981]

§ 15.2 Providing data bearing upon scope of employment or program participant status.

(a) The employee's employing Federal agency shall submit a report containing all data bearing upon the question whether the employee was acting within the scope of his office or employment with the Federal Government, at the time of the incident out of which the suit arose, to the United States Attorney for the district embracing the place wherein the civil action or proceeding is brought, with a copy of the report to the Branch Director of the Torts Branch, Civil Division, Department of Justice, at the earliest possible date, or within such time as shall be fixed by the United States Attorney upon request.

(b) A program participant as that term is defined in 42 U.S.C. 247b (k) (2) (B) shall deliver all information in the participant's possession or reasonably available to the participant concerning the participant's status as a program participant to the Branch Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, D.C. 20530, upon request and within such time as shall be fixed.

[Order No. 254-61, 26 FR 11420, Dec. 2, 1961, as amended at 42 FR 15410, Mar. 22, 1977; Order No. 960-81, 46 FR 52355, Oct. 27, 1981]

§ 15.3 Removal and defense of suits.

(a) The United States Attorneys are authorized to make the certifications provided for in 10 U.S.C. 1089(c), 22 U.S.C. 817(c), 28 U.S.C. 2679(d), 38 U.S.C. 4116(c), and 42 U.S.C. 233(c) and 2458a(c) with respect to civil actions or proceedings brought against Federal employees in their respective districts. Such a certification may be withdrawn if a further evaluation of the relevant facts or the consideration of new or additional evidence calls for such action. The making, withholding, or withdrawing of certifications, and the removal and defense of, or the refusal to remove and defend, such civil actions or proceedings by the United States Attorneys shall be subject to the instructions and supervision of the Assistant Attorney General in charge of the Civil Division.

(b) The Assistant Attorney General in charge of the Civil Division is authorized: (1) To make the certification provided for in 42 U.S.C. 247b (k) (5) with respect to civil actions or proceedings brought against program participants in various courts of law; (2) to withdraw that certification if further evaluation of the relevant facts or the consideration of new or additional evidence calls for such action; (3) to move to revoke such certification pursuant to 42 U.S.C. 247b (k) (6) should the facts warrant; and (4) to redelegate to subordinate division officials the authority delegated by this paragraph, provided that such redelegation shall be in writing and shall be approved by the Associate Attorney General before becoming effective.

[42 FR 15410, Mar. 22, 1977]

APPENDIX

CIVIL DIVISION

[Directive No. 90-77]

NOTE: At 44 FR 9379, Feb. 13, 1979, Civil Division, Directive No. 90-77 was revoked.

DELEGATION OF AUTHORITY OF THE ASSISTANT ATTORNEY GENERAL OF THE CIVIL DIVISION TO MAKE CERTIFICATIONS, TO WITHDRAW CERTIFICATIONS, AND TO FILE APPROPRIATE MOTIONS

CIVIL DIVISION

[Directive No. 90-79]

1. By virtue of the authority vested in me by Part 15 of Title 28 of the Code of Federal Regulations, particularly § 15.3(b), it is hereby ordered as follows:

2. The authority delegated to the Assistant Attorney General in charge of the Civil Division to make the certifications provided for in 10 U.S.C. 1089(c), 22 U.S.C. 817(c), 28 U.S.C. 2679(d), 38 U.S.C. 4116(c), and 42 U.S.C. 233(c) and 2458a(c) with respect to civil actions or proceedings brought against Federal employees and to certify the status of program participants under the National Swine Flu Immunization Program of 1976, as that term is defined in 42 U.S.C. 247b(k)(2)(B), and as required under 42 U.S.C. 247b(k)(4)-(5), is hereby delegated to any Deputy Assistant Attorney General of the Civil Division and to any Director of the Torts Branch, any one of whom may individually exercise the authority in any given instance. This delegation also includes the authority to withdraw the certification and file appropriate motions as set forth in § 15.3(b) of Title 28 of the Code of Federal Regulations.

3. Civil Division Directive No. 90-77 is hereby revoked.

[44 FR 9379, Feb. 13, 1979]

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

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16.6 Responses by divisions: Form and content.
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BEST DOCUMENT AVAILABLE

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AUTHORITY: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552; 31 U.S.C. 483a unless otherwise noted.

Subpart A—Production or Disclosure Under 5 U.S.C. 552(a)

EDITORIAL NOTE: Nomenclature changes to Subpart A, appear in Order No. 803-78, 43 FR 45992, Oct. 5, 1978.

§ 16.1 Purpose and scope.

(a) This subpart contains the regulations of the Department of Justice implementing 5 U.S.C. 552. The regulations of this subpart provide information concerning the procedures by which records may be obtained from all divisions within the Department of Justice. Official records of the Department of Justice made available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public as prescribed by this subpart. Officers and employees of the Department may continue to furnish to the public, informally and without compliance with the procedures prescribed herein, information and records which prior to enactment of 5 U.S.C. 552 were furnished customarily in the regular performance of their duties. Persons seeking information or records of the Department of Justice may find it useful to consult with the Department's Office of Public Affairs before invoking the formal procedures set out below. To the extent permitted by other laws, the Department also will make available records which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the public interest.

(b) The Attorney General's Memorandum on the Public Information section of the Administrative Procedure Act, which was published in June 1967 and is available from the Superintendent of Documents, may be consulted in considering questions arising under 5 U.S.C. 552. After appropriate coordination the Office of Legal Policy is authorized from time to time to undertake training activities for Department personnel to maintain and improve the quality of administration under 5 U.S.C. 552.

[Order No. 502-73, 38 FR 4391, Feb. 14, 1973, as amended by Order No. 803-78, 43 FR 45992, Oct. 5, 1978; Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

§ 16.2 Public reference facilities.

Each office listed below will maintain in a public reading room or public reading area, the materials relating to that office which are required by 5 U.S.C. 552(a)(2) and 552(a)(4) to be made available for public inspection and copying:

United States Attorneys and United States Marshals—at the principal offices of the United States Attorneys listed in the United States Government Organization Manual;
Bureau of Prisons—at its principal office at 101 Indiana Avenue, N.W., Washington, D.C. 20537;
United States Parole Commission—at its principal office at 5550 Friendship Boulevard, Chevy Chase, Maryland 20815-7286;
Foreign Claims Settlement Commission—See 45 CFR 503.1(g).
Federal Bureau of Investigation—at the J. Edgar Hoover Bldg., 9th and Pennsylvania Avenue, N.W., Washington, D.C. 20535;
Community Relations Service—at 5550 Friendship Boulevard, Chevy Chase, Maryland 20815-7286;
Criminal Division, Internal Security Section (for registrations of foreign agents and others pursuant to 28 CFR Parts 5, 10 and 12) at Room 458, Federal Triangle Building, 315 Ninth Street, N.W., Washington, D.C. 20530;
Board of Immigration Appeals—at Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041;
Immigration and Naturalization Service—see 8 CFR 103.9;
Office of Justice Assistance, Research and Statistics—at 633 Indiana Avenue, N.W., Washington, D.C. 20530;
All other Offices, Divisions, and Bureaus of the Department of Justice—at the Department of Justice, 10th & Pennsylvania Avenue, N.W., Washington, D.C. 20530.

[Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

§ 16.3 Requests for identifiable records and copies.

(a) *How made and addressed.* A request for a record of the Department which is not customarily made available and which is not available in a public reference facility as described in § 16.2, shall be made in writing, with the envelope and the letter clear-

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ly marked "FREEDOM OF INFORMATION REQUEST" or "INFORMATION REQUEST." All such requests shall be addressed to the Assistant Attorney General for the Office of Legal Policy, Department of Justice, Washington, D.C. 20530, except that requests for records of the following divisions shall be addressed as follows:

Bureau of Prisons (including Federal Prison Industries)—Director, Bureau of Prisons, 320 First Street NW., Washington, D.C. 20534.

Board of Immigration Appeals—Chairman, Board of Immigration Appeals, Department of Justice, Washington, D.C. 20530.

Office of Justice Assistance, Research and Statistics—Director, Office of Justice Assistance, Research and Statistics, 633 Indiana Ave. NW., Washington, D.C. 20531.

Immigration and Naturalization Service—As set forth in 8 CFR Part 103.

Any request for information not marked and addressed as specified in this paragraph will be so marked by Department personnel as soon as it is properly identified, and forwarded immediately to the appropriate office as specified above. A request improperly addressed will not be deemed to have been received for purposes of the time period set forth in 5 U.S.C. 552(a)(6)(A)(i) until forwarding to the appropriate office has been effected, or until such forwarding would have been effected with the exercise of due diligence by Department personnel. On receipt of an improperly addressed request forwarded as set forth above to the appropriate office, such office shall notify the requester of the date on which the time period commenced to run.

(b) *Request should reasonably describe the records sought.* A request for access to records should sufficiently identify the records requested to enable Department personnel to locate them with a reasonable amount of effort. Where possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be supplied by the requester. If the request relates to a matter in pending litigation, the court and its location should be identified.

(c) *Form may be requested.* Where the information supplied by the requester is not sufficient to permit location of the records by Department personnel with a reasonable amount of effort, the requester may be sent and asked to fill out and return a Form D.J. 118, which is designed to elicit the necessary information.

(d) *Categorical Requests*—(1) *Records must be reasonably described.* A request for all records falling within a reasonably specific category shall be regarded as conforming to the requirement that records be reasonably described if it enables the records requested to be identified by any process that is not unreasonably burdensome or disruptive of Department operations.

(2) *Assistance in reformulating nonconforming requests.* If it is determined that a request does not reasonably describe the records sought, as specified in paragraph (d)(1) of this section, the response denying the request on that ground shall specify the reasons why the request failed to meet the requirements of paragraph (d)(1) of this section and shall extend to the requester an opportunity to confer with Department personnel in order to attempt to reformulate the request in a manner which will meet the needs of the requester and the requirements of paragraph (d)(1) of this section.

[Order No. 502-73, 38 FR 4391, Feb. 14, 1973, as amended by Order No. 596-75, 40 FR 6496, Feb. 12, 1975; Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

§ 16.4 Requests referred to division primarily concerned.

(a) *Referral to responsible division.* The Assistant Attorney General, Office of Legal Policy, shall, promptly upon receipt of a request for Department records, forward the request to the division of the Department which has primary concern with the records requested. As used in this subpart, the term "division" includes all divisions, bureaus, offices, services, administrations, and boards of the Department, the Pardon Attorney and Federal Prison Industries, except as otherwise expressly provided. As used in this subpart, the term "responsible division" means, with respect to a particular request, the division to which the Assistant Attorney General, Office of

Legal Policy, forwards the request pursuant to this paragraph or, if the request is not one which is to be addressed to the Assistant Attorney General, Office of Legal Policy, under § 16.3(a), the division to which the request is properly addressed thereunder.

(b) *Assistant Attorney General, Office of Legal Policy, shall assure timely response.* The Assistant Attorney General, Office of Legal Policy, shall periodically review the practices of the divisions in meeting the time requirements set out in § 16.5, including the granting of extensions of time, and shall take such action to promote timely responses as he deems appropriate. Such action may include, but is not limited to, removal from a division of a request or class of requests or removal of the authority of a division to grant extensions, as specified in § 16.5(f).

(c) *Records to be kept by Assistant Attorney General, Office of Legal Policy.* The Assistant Attorney General, Office of Legal Policy, shall retain or be furnished with a file copy of each request which is required to be addressed to him pursuant to § 16.3(a). With respect to such requests he shall maintain records to show the date of receipt by the Department (and, in the case of improperly addressed requests, the date of receipt by the appropriate office after forwarding pursuant to § 16.3(a)), the responsible division to which it was forwarded under this section, and the date of such forwarding. The Board of Immigration Appeals, the Bureau of Prisons, the Immigration and Naturalization Service and the Office of Justice Assistance, Research and Statistics, respectively, shall retain or be furnished with file copies of requests required to be addressed to them pursuant to § 16.3(a), and shall maintain records to show the date of receipt by the Department (and, in the case of improperly addressed requests, the date of receipt by the appropriate office after forwarding pursuant to § 16.3(a)).

[Order No. 596-75, 40 FR 7263, Feb. 19, 1975, as amended by Order 960-81, 46 FR 52356, Oct. 27, 1981]

§ 16.5 Prompt response by responsible division.

(a) *Response within ten days.* Within ten days (excluding Saturdays, Sundays and legal public holidays) of the receipt of a request by the Department (or, in the case of an improperly addressed request, of its receipt by the appropriate office after forwarding pursuant to § 16.3(a)) the responsible division shall determine whether to comply with or to deny such request and dispatch such determination to the requester unless an extension is made under paragraph (c) of this section.

(b) *Authority to deny request.* Unless otherwise specified by division regulation, only the head of a division may deny a request, and is the "person responsible for the denial" within the meaning of 5 U.S.C. 552(a). When a denial is made at the request of another agency or division, and out of regard for its primary interest or expertise, the person in that agency or division responsible for the request to deny may also be a "person responsible for the denial" if, before his final recommendation is accepted, he is advised that he will be so designated under § 16.6(b)(2).

(c) *Extension of time.* In unusual circumstances as specified in this paragraph, the head of a division may extend the time for initial determination on requests up to a total of ten days (excluding Saturdays, Sundays, and legal public holidays). Extensions shall be granted in increments of five days or less and shall be made by written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph "unusual circumstances" means, but only to the extent necessary to the proper processing of the request—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct

records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency or another division having substantial interest in the determination of the request, or the need for consultation among two or more components of the responsible division having substantial subject matter interest therein.

(d) *Treatment of delay as a denial.* If no determination has been dispatched at the end of the ten-day period, or the last extension thereof, the requester may deem his request denied, and exercise a right of appeal in accordance with § 16.7. When no determination can be dispatched within the applicable time limit, the responsible division shall nevertheless continue to process the request; on expiration of the time limit it shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial and to appeal to the Attorney General in accordance with § 16.7; and it may ask the requester to forego appeal until a determination is made.

(e) *Removal by Assistant Attorney General, Office of Legal Policy.* The Assistant Attorney General, Office of Legal Policy may remove any request or class of requests from the division to which it is referable under this part. The Assistant Attorney General, Office of Legal Policy may remove from a division the authority to grant extensions of time under this section. In event of such action the Assistant Attorney General, Office of Legal Policy shall perform the functions of the head of that division with respect to the removed requests or authority.

[Order No. 596-75, 40 FR 7263, Feb. 19, 1975, as amended by Order No. 877-80, 45 FR 20800, Mar. 31, 1980; Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

§ 16.6 Responses by divisions: Form and content.

(a) *Form of grant.* When a requested record has been identified and is available, the responsible division shall notify the requester as to where and when the record is available for inspection or copies will be available. The notification shall also advise the requester of any applicable fees under § 16.9 hereof.

(b) *Form of denial.* A reply denying a written request for a record shall be in writing, signed by the head of the responsible division (or other person authorized by regulation to deny requests) and shall include:

(1) *Exemption category.* A reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record, a brief explanation of how the exemption applies to the record withheld, and, where relevant, a brief statement of why a discretionary release is not appropriate; and

(2) *Person responsible.* The name and title or position of the person or persons responsible for the denial under § 16.5(b): *Provided,* That no person not an employee of the responsible division shall be so designated unless he has been advised that he will be so designated before his final recommendation is accepted; and

(3) *Administrative appeal and judicial review.* A statement that the denial may be appealed under § 16.7(a) within thirty days by writing to the Attorney General (Attention: Office of Legal Policy), Department of Justice, Washington, D.C. 20530 that the envelope and letter should be clearly marked: "Office of Legal Policy," and that judicial review will thereafter be available in the district in which the requester resides or has his principal place of business or the district in which the agency records are situated or the District of Columbia.

(c) *Record cannot be located or does not exist.* If a requested record cannot be located from the information supplied, or is known to have been destroyed or otherwise disposed of, the requester shall be so notified.

[Order No. 502-73, 38 FR 4391, Feb. 14, 1973, as amended by Order No. 596-75, 40 FR 7263, Feb. 19, 1975; Order No. 877-80, 45 FR 20800, Mar. 31, 1980; Order No. 900-80, 45 FR 43703, June 30, 1980; Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

§ 16.7 Appeals to the Attorney General from initial denials.

(a) *Appeals to the Attorney General.* When a request for records has been denied in whole or in part by a head of a division or other person authorized to deny requests, the requester may, within thirty days of its receipt, appeal the denial to the Attorney General. Appeals to the Attorney General shall be in writing, addressed to the Attorney General (Attention: Office of Legal Policy), Department of Justice, Washington, D.C. 20530, and both the envelope and the letter shall be clearly marked: "Office of Legal Policy". An appeal not so addressed and marked will be so marked by Department personnel as soon as it is properly identified, and forwarded immediately to the Office of Legal Policy. An appeal improperly addressed will not be deemed to have been received for purposes of the time period set forth in 5 U.S.C. 552(a)(6)(A)(ii) and for purposes of paragraph (b) of this section until the Office of Legal Policy receives the request or would have done so with the exercise of due diligence by Department personnel.

(b) *Action on Appeals by the Assistant Attorney General, Office of Legal Policy.* Unless the Attorney General otherwise directs, the Assistant Attorney General, Office of Legal Policy, shall act on behalf of the Attorney General on all appeals under this section, except that (1) in the case of an initial denial by the Assistant Attorney General, Office of Legal Policy, the Attorney General or his designee shall act on the appeal, and (2) an initial denial by the Attorney General shall constitute the final action of the Department on the request.

(c) *Action within twenty working days.* The appeal will be acted upon within twenty days (excluding Saturdays, Sundays and legal public holidays) of its receipt, unless an extension is made under paragraph (d) of this section.

(d) *Extension of time.* In unusual circumstances as specified in this paragraph, the time for action on an appeal may be extended up to ten days (excluding Saturdays, Sundays, and legal public holidays) minus any extension granted at the initial request level pursuant to § 16.5(c). Such extension shall be made by written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph "unusual circumstances" means, but only to the extent necessary to the proper processing of the appeal—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency or another division having substantial interest in the determination of the request or the need for consultation among two or more components of the responsible division having substantial subject matter interest therein.

(e) *Treatment of delay as a denial.* If no determination on the appeal has been dispatched at the end of the twenty-day period or the last extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be dispatched within the applicable time limit, the appeal will nevertheless continue to be processed; on expiration of the time limit the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to seek judicial review in the United States district court in the district in which he resides or has his principal place of business, the district in which the Department records are situated or the District of Columbia. The requester may be asked to forego judicial review until determination of the appeal.

(f) *Form of action on appeal.* The determination on appeal shall be in writing. An affirmance in whole or in part of a denial on appeal shall include: (1) A reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record, a brief explanation of how the exemption applies to the record withheld, and, where relevant, a brief statement of why a discretionary release is not appropriate; and (2) a statement that judicial review of the denial is available in the district in which the requester resides or has his principal place of business, the district in which the agency records are situated or the District of Columbia.

(g) *Copies to Assistant Attorney General, Office of Legal Policy.* Copies of all appeals, all actions on appeal, all extension notices issued under paragraph (d) of this section, and all delay advisories issued under paragraph (e) of this section shall be maintained by and when necessary supplied to the Assistant Attorney General, Office of Legal Policy.

[Order No. 596-75, 40 FR 7264, Feb. 19, 1975, as amended by Order No. 615-75, 40 FR 33214, Aug. 7, 1975; Order No. 900-80, 45 FR 43703, June 30, 1980; Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

§ 16.8 Maintenance of files.

(a) *Complete files maintained by Assistant Attorney General, Office of Legal Policy.* The Assistant Attorney General, Office of Legal Policy shall maintain files containing all material required to be retained by or furnished to him under this subpart. The material shall be filed by individual request; and shall be indexed according to the exemptions asserted; and, to the extent feasible, according to the type of records requested.

(b) *Maintenance of file open to public.* The Assistant Attorney General, Office of Legal Policy, shall also maintain a file, open to the public, which shall contain copies of all grants or denials of appeals. The material shall be indexed by the exemption asserted, and, to the extent feasible, according to the type of records requested.

(c) *Protection of privacy.* Where the release of the identity of a requester, or other identifying details related to a request, would constitute a clearly unwarranted invasion of personal privacy, the Assistant Attorney General, Office of Legal Policy, shall delete identifying details from the copies of documents maintained in the public file established under paragraph (b) of this section.

[Order No. 502-73, 38 FR 4391, Feb. 14, 1973, as amended by Order No. 596-75, 40 FR 7264, Feb. 19, 1975; Order No. 615-75, 40 FR 33214, Aug. 7, 1975; Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

§ 16.9 Fees for provisions of records.

(a) *When charged.* Fees pursuant to 31 U.S.C. 483a and 5 U.S.C. 552 shall be charged according to the schedules contained in paragraph (b) of this section for services rendered in responding to requests for Justice Department records under this subpart unless the official of the Department making the initial or appeal decision determines that such charges, or a portion thereof, are not in the public interest because furnishing the information primarily benefits the general public. Such a determination shall ordinarily not be made unless the service to be performed will be of benefit primarily to the public as opposed to the requester, or unless the requester is an indigent individual. Fees shall not be charged where they would amount, in the aggregate, for a request or series of related requests, to less than $3. Ordinarily, fees shall not be charged if the records requested are not found, or if all of the records located are withheld as exempt. However, if the time expended in processing the request is substantial, and if the requester has been notified of the estimated cost pursuant to paragraph (c) of this section and has been specifically advised that it cannot be determined in advance whether any records will be made available, fees may be charged.

(b) *Services charged for, and amount charged.* For the services listed below expended in locating or making available records or copies thereof, the following charges shall be assessed:

(1) *Copies.* For copies of documents (maximum of 10 copies will be supplied) $0.10 per copy of each page.

(2) *Clerical searches.* For each one quarter hour spent by clerical personnel in excess of the first quarter hour in searching for and producing a requested record, $1.00.

(3) [Reserved]

(4) *Certification.* For certification of true copies, each, $1.

(5) *Attestation.* For attestation under the seal of the Department, $3.

(6) *Nonroutine, nonclerical searches.* Where a search cannot be performed by clerical personnel, for example, where the task of determining which records fall within a request and collecting them requires the time of professional or managerial personnel, and where the amount of time that must be expended in the search and collection of the requested records by such higher level personnel is substantial, charges for the search may be made at a rate in excess of the clerical rate, namely for each one quarter hour spent in excess of the first quarter hour by such higher level personnel in searching for a requested record, $2.00.

(7) *Examination and related tasks in screening records.* No charge shall be made for time spent in resolving legal or policy issues affecting access to records of known contents. In addition, no charge shall be made for the time involved in examining records in connection with determining whether they are exempt from mandatory disclosure and should be withheld as a matter of sound policy.

(8) *Computerized Records.*

(i) *Computer time charges (includes personnel cost).*

1. Central processor charge per hour	$188.00
2. Main storage charge per 1,000 bytes per hour	.50
3. Channel charges per hour	.74
4. Card reading per 1,000 cards	.20
5. Printing per 1,000 lines	.43
6. Card punching per 1,000 cards	10.76
7. Tape mount	.50
8. Specific device charges:	
a. IBM 2260 Cathode ray tube or equivalent per hour	4.20
b. IBM 3330 Disk storage or equivalent per hour	39.72
c. IBM 2314 Disk storage or equivalent per hour	39.72
d. IBM 3420 Tape Drive or equivalent per hour	44.59

(ii) *Material charges.*

1. One-part paper per 1,000	$11.00
2. Two-part paper per 1,000	17.63
3. Three-part paper per 1,000	28.95
4. Four-part paper per 1,000	37.52
5. Five-part paper per 1,000	50.83
6. Stock Hollerith cards per 1,000	1.78
7. Magnetic tape per reel	9.50
8. Disk pack, each	775.00

(9) *Tape recordings and other audio records.*

(i) *Personnel charges.* Personnel charges in connection with the duplication of audio records shall be charged in accordance with paragraph (b)(2) or (b)(6) of this section, whichever is appropriate.

(ii) *Material charges.*

1. 45 minute cassette	$0.56
2. 60 minute cassette	.60
3. 90 minute cassette	.77

(10) *Other charges.* When a response to a request requires services or materials other than the common ones described in paragraphs (b)(1) through (b)(9) of this section, the direct cost of such services or materials to the government may be charged, but only if the requester has been notified of such cost before it is incurred.

(c) *Notice of anticipated fees in excess of $25.* Where it is anticipated that the fees chargeable under this section will amount to more than $25, and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In such cases, a request will not be deemed to have been received until the requester is notified of the anticipated cost and agrees to bear it. Such a notification shall be transmitted as soon as possible, but in any event within five working days, giving the best estimate then available. The notification shall offer the requester the opportunity to confer with Department personnel with the object of reformulating the request so as to meet his needs at lower cost.

(d) *Form of payment.* Payment should be made by check or money order payable to the Treasury of the United States.

(e) *Advance deposit.* (1) Where the anticipated fee chargeable under this section exceeds $25, an advance deposit of 25% of the anticipated fee or $25, whichever is greater, may be required.

(2) Where a requester has previously failed to pay a fee under this section, an advance deposit of the full amount of the anticipated fee may be required.

(f) *Other services.* Nothing in this section shall be construed to entitle any person, as of right, to any services or materials to which such person is not entitled under 5 U.S.C. 552.

[Order No. 502-73, 38 FR 4391, Feb. 14, 1973, as amended by Order No. 502-73, 38

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FR 9666, Apr. 19, 1973; Order No. 599-75, 40 FR 7265, Feb. 19, 1975]

§ 16.10 Exemptions.

(a) 5 U.S.C. 552 exempts from all of its publication and disclosure requirements nine categories of records which are described in subsection (b) of that section. These categories include such matters as national defense and foreign policy information; investigatory files; internal procedures and communications; materials exempted from disclosure by other statutes; information given in confidence; and matters involving personal privacy. The scope of the exemptions is discussed generally in the Attorney General's memorandum referred to in § 16.1.

(b) (1) In processing requests for information classified pursuant to Executive Order 11652, the responsible division shall review the information to determine whether it continues to warrant classification under the criteria of sections 1 and 5 (B), (C), (D), and (E) of the Executive Order. Information which no longer warrants classification under these criteria shall be declassified and shall not be withheld on the basis of 5 U.S.C. 552(b)(1). No record remaining classified after such review shall be withheld by a division on the basis of any exemption other than 5 U.S.C. 552(b)(1) unless in addition to such other exemption it is also asserted that the record is exempt under 5 U.S.C. 552(b)(1).

(2) The Office of Legal Policy shall, upon receipt of any appeal from an initial denial based in whole or in part upon 5 U.S.C. 552(b)(1), refer to the Departmental Review Committee, established in Part 17 of this chapter, any portion of the request as to which that exemption was asserted at the initial level. Within ten days (excluding Saturdays, Sundays and legal public holidays) of receipt of such referral (unless such period is extended by the Assistant Attorney General, Office of Legal Policy), the Committee shall advise the Appeals Unit whether all or any portion of the material referred warrants continued classification under the criteria of Executive Order 11652.

(3) When a request for Department records encompasses information classified by another agency, or by a division of the Department other than the responsible division, the responsible division shall refer that portion of the request to the originating agency or division for determination as to all issues in accordance with the Freedom of Information Act. In the case of a referral to another agency under this paragraph, the requester shall be notified that such portion of his request has been so referred and that he may expect a determination from that agency. In the case of a referral to another division under this paragraph, the requester need not be notified, the original date of receipt of the request as established under this section shall continue to govern for purposes of all time limits, and the originating division shall advise the division receiving the request of its determination.

[Order No. 502-73, 38 FR 4391, Feb. 14, 1973, as amended by Order No. 596-75, 40 FR 7264 Feb. 19, 1975; Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

APPENDIX TO SUBPART A—DELEGATION OF AUTHORITY

1. By virtue of the authority vested in me by Section 16.5(b) of Title 28 of the Code of Federal Regulations, the authority to deny requests under the Freedom of Information Act is delegated to the occupant of the position of Chief, Freedom of Information-Privacy Acts Section, Records Management Division, Federal Bureau of Investigation. This same authority is delegated to the occupant of the position of Special Agent in Charge of each of the field offices of the Federal Bureau on Investigation for records in their custody and control.

2. This directive is effective June 9, 1981.

[46 FR 32021, June 19, 1981]

Subpart B—Production or Disclosure in Federal and State Proceedings

SOURCE: Order No. 919-80, 45 FR 83210, Dec. 18, 1980, unless otherwise noted.

§ 16.21 Purpose and scope.

(a) This subpart sets forth procedures to be followed with respect to the production or disclosure of any material contained in the files of the Department, any information relating to material contained in the files of the Department, or any information acquired by any person while such person was an employee of the Department as a part of the performance of that person's official duties or because of that person's official status:

(1) In all federal and state proceedings in which the United States is a party; and

(2) In all federal and state proceedings in which the United States is not a party, including any proceedings in which the Department is representing a government employee solely in that employee's individual capacity, when a subpoena, order, or other demand (hereinafter collectively referred to as a "demand") of a court or other authority is issued for such material or information.

(b) For purposes of this subpart, the term "employee of the Department" includes all officers and employees of the United States appointed by, or subject to the supervision, jurisdiction, or control of the Attorney General of the United States, including U.S. attorneys, U.S. marshals, U.S. trustees and members of the staffs of those officials.

(c) Nothing in this subpart is intended to impede the appropriate disclosure, in the absence of a demand, of information by Department law enforcement agencies to federal, state, local and foreign law enforcement, prospective, or regulatory agencies.

(d) This subpart is intended only to provide guidance for the internal operations of the Department of Justice, and is not intended to, and does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States.

§ 16.22 General prohibition of production or disclosure in Federal and State proceedings in which the United States is not a party.

(a) In any federal or state case or matter in which the United States is not a party, no employee or former employee of the Department of Justice shall, in response to a demand, produce any material contained in the files of the Department, or disclose any information relating to or based upon material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of that person's official duties or because of that person's official status without prior approval of the proper Department official in accordance with §§ 16.24 and 16.25 of this part.

(b) Whenever a demand is made upon an employee or former employee as described in paragraph (a) of this section, the employee shall immediately notify the United States Attorney for the district where the issuing authority is located. The responsible United States attorney shall follow procedures set forth in § 16.24 of this part.

(c) If oral testimony is sought by a demand in any case or matter in which the United States is not a party, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or by his attorney, setting forth a summary of the testimony sought and its relevance to the proceeding, must be furnished to the responsible United States attorney. Any authorization for testimony by a present or former employee of the Department shall be limited to the scope of the demand as summarized in such statement.

(d) When information other than oral testimony is sought by a demand, the responsible United States attorney shall request a summary of the information sought and its relevance to the proceeding.

§ 16.23 General disclosure authority in Federal and State proceedings in which the United States is a party.

(a) Every attorney in the Department of Justice in charge of any case or matter in which the United States is a party is authorized, after consultation with the "originating component" as defined in § 16.24(a) of this part, to reveal and furnish to any person, including an actual or prospective witness, a grand jury, counsel, or a court, either during or preparatory to a proceeding, such testimony, and relevant unclassified material, documents, or information secured by any attorney, or investigator of the Department of Justice, as such attorney shall deem necessary or desirable to the discharge of the attorney's offical duties: *Pro-*

vided, Such an attorney shall consider, with respect to any disclosure, the factors set forth in § 16.26(a) of this part: *And further provided,* An attorney shall not reveal or furnish any material, documents, testimony or information when, in the attorney's judgment, any of the factors specified in § 16.26(b) exists, without the express prior approval by the Assistant Attorney General in charge of the division responsible for the case or proceeding, the Director of the Executive Office for United States Trustees (hereinafter referred to as "the EOUST"), or such persons' designees.

(b) An attorney may seek higher level review at any stage of a proceeding, including prior to the issuance of a court order, when the attorney determines that a factor specified in § 16.26(b) exists or foresees that higher level approval will be required before disclosure of the information or testimony in question. Upon referral of a matter under this subsection, the responsible Assistant Attorney General, the Director of EOUST, or their designees shall follow procedures set forth in § 16.24 of this part.

(c) If oral testimony is sought by a demand in a case or matter in which the United States is a party, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or by the party's attorney setting forth a summary of the testimony sought must be furnished to the Department attorney handling the case or matter.

§ 16.24 Procedure in the event of a demand where disclosure is not otherwise authorized.

(a) Whenever a matter is referred under § 16.22 of this part to a United States Attorney or, under § 16.23 of this part, to an Assistant Attorney General, the Director of the EOUST, or their designees (hereinafter collectively referred to as the "responsible official"), the responsible official shall immediately advise the official in charge of the bureau, division, office, or agency of the Department that was responsible for the collection, assembly, or other preparation of the material demanded or that, at the time the person whose testimony was demanded acquired the information in question, employed such person (hereinafter collectively referred to as the "originating component"), or that official's designee. In any instance in which the responsible official is also the official in charge of the originating component, the responsible official may perform all functions and make all determinations that this regulation vests in the originating component.

(b) The responsible official, subject to the terms of paragraph (c) of this section, may authorize the appearance and testimony of a present or former Department employee, or the production of material from Department files if:

(1) There is no objection after inquiry of the originating component;

(2) The demanded disclosure, in the judgment of the responsible official, is appropriate under the factors specified in § 16.26(a) of this part; and

(3) None of the factors specified in § 16.26(b) of this part exists with respect to the demanded disclosure.

(c) It is Department policy that the responsible official shall, following any necessary consultation with the originating component, authorize testimony by a present or former employee of the Department or the production of material from Department files without further authorization from Department officials whenever possible: *Provided,* That, when information is collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of the Department or by the EOUST, the Assistant Attorney General in charge of such a division or the Director of the EOUST may require that the originating component obtain the division's or the EOUST's approval before authorizing a responsible official to disclose such information. Prior to authorizing such testimony or production, however, the responsible official shall, through negotiation and, if necessary, appropriate motions, seek to limit the demand to information, the disclosure of which would not be inconsistent with the considerations specified in § 16.26 of this part.

(d)(1) In a case in which the United States is not a party, if the responsible U.S. attorney and the originating component disagree with respect to the appropriateness of demanded testimony or of a particular disclosure, or if they agree that such testimony or such a disclosure should not be made, they shall determine if the demand involves information that was collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of this Department or the EOUST. If so, the U.S. attorney shall notify the Director of the EOUST or the Assistant Attorney General in charge of the division responsible for such litigation or investigation, who may:

(i) Authorize personally or through a Deputy Assistant Attorney General, the demanded testimony or other disclosure of the information if such testimony or other disclosure, in the Assistant or Deputy Assistant Attorney General's judgment or in the judgment of the Director of the EOUST, is consistent with the factors specified in § 16.26(a) of this part, and none of the factors specified in § 16.26(b) of this part exists with respect to the demanded disclosure;

(ii) Authorize, personally or by a designee, the responsible official, through negotiations and, if necessary, appropriate motions, to seek to limit the demand to matters, the disclosure of which, through testimony or documents, considerations specified in § 16.26 of this part, and otherwise to take all appropriate steps to limit the scope or obtain the withdrawal of a demand; or

(iii) If, after all appropriate steps have been taken to limit the scope or obtain the withdrawal of a demand, the Director of the EOUST or the Assistant or Deputy Assistant Attorney General does not authorize the demanded testimony or other disclosure, refer the matter, personally or through a Deputy Assistant Attorney General, for final resolution to the Deputy or Associate Attorney General, as indicated in § 16.25 of this part.

(2) If the demand for testimony or other disclosure in such a case does not involve information that was collected, assembled, or prepared in connection with litigation or an investigation supervised by a division of this Department, the originating component shall decide whether disclosure is appropriate, except that, when especially significant issues are raised, the responsible official may refer the matter to the Deputy or Associate Attorney General, as indicated in § 16.25 of this part. If the originating component determines that disclosure would not be appropriate and the responsible official does not refer the matter for higher level review, the responsible official shall take all appropriate steps to limit the scope or obtain the withdrawal of a demand.

(e) In a case in which the United States is a party, the Assistant General or the Director of the EOUST responsible for the case or matter, or such persons' designees, are authorized, after consultation with the originating component, to exercise the authorities specified in § 16.24(d)(1)(i)-(iii) of this part: *Provided,* That if a demand involves information that was collected, assembled, or prepared originally in connection with litigation or an investigation supervised by another unit of the Department, the responsible official shall notify the other division or the EOUST concerning the demand and the anticipated response. If two litigating units of the Department are unable to resolve a disagreement concerning disclosure, the Assistant Attorneys General in charge of the two divisions in disagreement, or the Director of the EOUST and the appropriate Assistant Attorney General, may refer the matter to the Deputy or Associate Attorney General, as indicated in § 16.25(b) of this part.

(f) In any case or matter in which the responsible official and the originating component agree that it would not be appropriate to authorize testimony or otherwise to disclose the information demanded, even if a court were so to require, no Department attorney responding to the demand should make any representation that implies that the Department would, in fact, comply with the demand if directed to do so by a court. After taking all appropriate steps in such cases to limit the scope or obtain the withdrawal of a demand, the responsible official shall refer the matter to the Deputy or Associate Attorney General, as indicated in § 16.25 of this part.

(g) In any case or matter in which the Attorney General is personally involved in the claim of privilege, the responsible official may consult with the Attorney General and proceed in accord with the Attorney General's instructions without subsequent review by the Deputy or Associate Attorney General.

§ 16.25 Final action by the Deputy or Associate Attorney General.

(a) Unless otherwise indicated, all matters to be referred under § 16.24 by an Assistant Attorney General, the Director of the EOUST, or such person's designees to the Deputy or Associate Attorney General shall be referred (1) to the Deputy Attorney General, if the matter is referred personally by or through the designee of an Assistant Attorney General who is within the general supervision of the Deputy Attorney General, or (2) to the Associate Attorney General, in all other cases.

(b) All other matters to be referred under § 16.24 to the Deputy or Associate Attorney General shall be referred (1) to the Deputy Attorney General, if the originating component is within the supervision of the Deputy Attorney General or is an independent agency that, for administrative purposes, is within the Department of Justice, or (2) to the Associate Attorney General, if the originating component is within the supervision of the Associate Attorney General.

(c) Upon referral, the Deputy or Associate Attorney General shall make the final decision and give notice thereof to the responsible official and such other persons as circumstances may warrant.

§ 16.26 Considerations in determining whether production or disclosure should be made pursuant to a demand.

(a) In deciding whether to make disclosures pursuant to a demand, Department officials and attorneys should consider:

(1) Whether such disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose, and

(2) Whether disclosure is appropriate under the relevant substantive law concerning privilege.

(b) Among the demands in response to which disclosure will not be made by any Department official are those demands with respect to which any of the following factors exist:

(1) Disclosure would violate a statute, such as the income tax laws, 26 U.S.C. 6103 and 7213, or a rule of procedure, such as the grand jury secrecy rule, F.R.Cr.P., Rule 6(e),

(2) Disclosure would violate a specific regulation;

(3) Disclosure would reveal classified information, unless appropriately declassified by the originating agency,

(4) Disclosure would reveal a confidential source or informant, unless the investigative agency and the source or informant have no objection,

(5) Disclosure would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would thereby be impaired,

(6) Disclosure would improperly reveal trade secrets without the owner's consent.

(c) In all cases not involving considerations specified in paragraphs (b)(1) through (b)(6) of this section, the Deputy or Associate Attorney General will authorize disclosure unless, in that person's judgment, after considering paragraph (a) of this section, disclosure is unwarranted. The Deputy or Associate Attorney General will not approve disclosure if the circumstances specified in paragraphs (b)(1) through (b)(3) of this section exist. The Deputy or Associate Attorney General will not approve disclosure if any of the conditions in paragraphs (b)(4) through (b)(6) of this section exist, unless the Deputy or Associate Attorney General determines that the administration of justice requires disclosure. In this regard, if disclosure is necessary to pursue a civil or criminal prosecution or affirmative relief, such as an injunction, consideration shall be given to:

(1) The seriousness of the violation or crime involved,

(2) The past history or criminal record of the violator or accused,

(3) The importance of the relief sought,

(4) The importance of the legal issues presented.

(5) Other matters brought to the attention of the Deputy or Associate Attorney General.

(d) Assistant Attorneys General, United States attorneys, the Director of the EOUST, United States trustees, and their designees, are authorized to issue instructions to attorneys and to adopt supervisory practices, consistent with this subpart, in order to help foster consistent application of the foregoing standards and the requirements of this subpart.

§ 16.27 Procedure in the event a department decision concerning a demand is not made prior to the time a response to the demand is required.

If response to a demand is required before the instructions from the appropriate Department official are received, the responsible official or other Department attorney designated for the purpose shall appear and furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of the appropriate Department official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

§ 16.28 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 16.27 of this chapter pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions rendered in accordance with §§ 16.24 and 16.25 of this part not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall, if so directed by the responsible Department official, respectfully decline to comply with the demand. *See* United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951).

§ 16.29 Delegation by Assistant Attorneys General.

With respect to any function that this subpart permits the designee of an Assistant Attorney General to perform, the Assistant Attorneys General are authorized to delegate their authority, in any case or matter or any category of cases or matters, to subordinate division officials or U.S. attorneys, as appropriate.

APPENDIX TO SUBPART B—REDELEGATION OF AUTHORITY TO THE DEPUTY ASSISTANT ATTORNEY GENERAL FOR LITIGATION, ANTITRUST DIVISION, TO AUTHORIZE PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

1. By virtue of the authority vested in me by 28 CFR 16.23(b)(1) the authority delegated to me by that section to authorize the production of material and disclosure of information described in 28 CFR 16.21(a) is hereby redelegated to the Deputy Assistant Attorney General for Litigation, Antitrust Division.

2. This directive shall become effective on the date of its publication in the FEDERAL REGISTER.

[Amdt. No. 960-81, 46 FR 52356, Oct. 27, 1981]

Subpart C—Production of FBI Identification Records in Response to Written Requests by Subjects Thereof

SOURCE: Order No. 556-73, 38 FR 32806, Nov. 28, 1973, unless otherwise noted.

§ 16.30 Purpose and scope.

This subpart contains the regulations of the Federal Bureau of Investigation, hereafter referred to as the FBI, concerning procedures to be followed when the subject of an identification record requests production thereof. It also contains the procedures for obtaining any change, correction or updating of such record.

§ 16.31 Definition of identification record.

An FBI identification record, often referred to as a "rap sheet", is a listing of certain information taken from fingerprint cards submitted to and retained by the FBI in connection with arrests and, in some instances, includes information taken from fingerprint cards submitted in connection with Federal employment, naturalization, or military service. The identification record includes the name of the agency or institution which submitted the fingerprint card to the FBI. If the fingerprint card concerns a criminal offense, the identification record includes the date arrested or received, the arrest charge, and the disposition of the arrest if known to the FBI. All arrest data included in an identification record are obtained from fingerprint cards, disposition reports and other reports submitted by agencies having criminal justice responsibilities. Therefore, the FBI Identification Division is not the source of the arrest data reflected on an identification record.

[Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

§ 16.32 Procedure to obtain an identification record.

The subject of an identification record may obtain a copy thereof by submitting a written request via the U.S. mails directly to the FBI, Identification Division, Washington, D.C. 20537, or may present his written request in person during regular business hours to the FBI Identification Division, Room 11262, J. Edgar Hoover Building, Tenth Street and Pennsylvania Avenue NW., Washington, D.C. Such request must be accompanied by satisfactory proof of identity, which shall consist of name, date and place of birth and a set of rolled-inked fingerprint impressions placed upon fingerprint cards or forms commonly utilized for applicant or law enforcement purposes by law enforcement agencies.

[Order No. 805-78, 43 FR 50173, Oct. 27, 1978]

§ 16.33 Fee for provision of identification record.

Each written request for production of an identification record must be accompanied by a fee of five dollars ($5.00) in the form of a certified check or money order, payable to the Treasurer of the United States. This fee is established pursuant to the provisions of 31 U.S.C. 483a and is based upon the clerical time beyond the first quarter hour to be spent in searching, identifying and reproducing each identification record requested, at the rate of $1.25 per quarter hour, as specified in § 16.9. Any request for waiver of fee shall accompany the original request for the identification record and shall include a claim and proof of indigency. Consideration will be given to waiving the fee in such cases.

§ 16.34 Procedure to obtain change, correction or updating of identification records.

If, after reviewing his identification record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, corrections or updating of the alleged deficiency, he should make application directly to the agency which contributed the questioned information. The subject of a record may also direct his challenge as to the accuracy or completeness of any entry on his record to the Assistant Director of the FBI Identification Division, Washington, D.C. 20537. The FBI will then forward the challenge to the agency which submitted the data requesting that agency to verify or correct the challenged entry. Upon the receipt of an official communication directly from the agency which contributed the original information, the FBI Identification Division will make any changes necessary in accordance with the information supplied by that agency.

[Order No. 805-78, 43 FR 50173, Oct. 27, 1978]

Subpart D—Protection of Privacy of Individual Records

AUTHORITY: 5 U.S.C. 552a.

SOURCE: Order No. 627-75, 40 FR 50642, Oct. 30, 1975, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to Subpart D appear in Order No. 803-78, 43 FR 45992, Oct. 5, 1978, and in Order No. 899-80, 45 FR 43703, June 30, 1980.

§ 16.40 Purpose and scope.

(a) This subpart contains the regulations of the Department of Justice implementing the Privacy Act of 1974, Pub. L. 93-579. The regulations apply to all records contained in systems of records maintained by the Department of Justice which are retrieved by individual name or identifier, except that for personnel records, where there is a conflict between these regulations and those of the Office of Personnel Management regulations shall prevail. The regulations set forth the procedures by which individuals may seek access to records pertaining to themselves in these systems of records and request correction of them. The regulations also set forth the requirements applicable to Department of Justice employees maintaining, collecting, using or disseminating such records. These regulations are applicable to each Office, Division, Board, Bureau, Service and Administration of the Department (hereafter referred to as a "component").

(b) The Assistant Attorney General for Administration shall provide that the provisions of this subpart and any revisions thereof shall be brought to the attention of and made available to:

(1) Each employee at the time of issuance of this subpart and any amendment thereto; and

(2) Each new employee at the time of employment.

(c) The Assistant Attorney General for Administration shall be responsible for insuring that employees of the Department of Justice are trained in the obligations imposed by the Privacy Act of 1974 and by these regulations, but each component of the Department is authorized to undertake training for its own employees.

(d) The head of a "component" (as defined in paragraph (a)) or his designee is authorized to make written requests under 5 U.S.C. 552a(b)(7), for records maintained by other agencies, if the records are necessary to carry out an authorized law enforcement activity of the component. These duties may be redelegated to other officials within the component, but not below the level of section chief or a comparable position.

[Order No. 627-75, 40 FR 50642, Oct. 30, 1975, as amended by Order No. 735-77, 42 FR 37975, July 26, 1975]

§ 16.41 Access by individuals to records maintained about them.

(a) *Access to available records.* An individual seeking access to records about himself in a system of records, which have not been exempted from access pursuant to the Privacy Act of 1974, may present his request in person or in writing to the manager of the particular system of records to which he seeks access or to such other person as may be specified. System managers and others to whom requests may be presented are identified in the "Notice of Records Systems" published by the National Archives and Records Service, General Services Administration. Access to Department of Justice records maintained in National Archives and Records Service Centers may be obtained in accordance with the regulations issued by the General Services Administration. Access to records in multiple systems of records should be addressed to each component maintaining one of the systems. If a requester seeks guidance in defining his request, he may write to the Assistant Attorney General for Administration, Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

(b) *Verification of identity.* The following standards are applicable to any individual who requests records concerning himself, unless other provisions for identity verification are specified in the published notice pertaining to the particular system of records.

(1) An individual seeking access to records about himself in person may establish his identity by the presentation of a single document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and address (such as a driver's license, or credit card).

(2) An individual seeking access to records about himself by mail shall establish his identity by a signature, address, date of birth, place of birth, employee identification number if any, and one other identifier such as a photocopy of an identifying document.

(3) An individual seeking access to records about himself by mail or in person who cannot provide the necessary documentation of identification may provide a notarized statement, swearing or affirming to his identity and to the fact that he understands

the penalties for false statements pursuant to 18 U.S.C. 1001. Forms for such notarized statements may be obtained on request from the Assistant Attorney General for Administration U.S. Department of Justice, Washington, D.C. 20530.

(c) *Verification of guardianship.* The parent or guardian of a minor or a person judicially determined to be incompetent and seeking to act on behalf of such minor or incompetent shall, in addition to establishing his own identity, establish the identity of the minor or other person he represents as required in paragraph (b) of this section and establish his own parentage or guardianship of the subject of the record by furnishing either a copy of a birth certificate showing parentage or a court order establishing the guardianship.

(d) *Accompanying persons.* An individual seeking to review records about himself may be accompanied by another individual of his own choosing. Both the individual seeking access and the individual accompanying him shall be required to sign the required form indicating that the Department of Justice is authorized to discuss the contents of the subject record in the presence of both individuals.

(e) *Specification of records sought.* Requests for access to records, either in person or by mail shall describe the nature of the records sought, the approximate dates covered by the record, the system or systems in which it is thought to be included as described in the "Notices of Records Systems" published by the General Services Administration, and the identity of the system manager or component of the Department having custody of the system of records. In addition, the published "Notice of Systems Records" for individual systems may include further requirements of specification where necessary to retrieve the individual record from the system.

§ 16.42 Records exempt in whole or in part.

(a) When an individual requests records about himself which have been exempted from individual access pursuant to 5 U.S.C. 552a (j) or (k)(3) or (k)(4) or which have been compiled in reasonable anticipation of a civil action or proceeding either in a court or before an administrative tribunal, the Department of Justice will neither confirm nor deny the existence of the record but shall advise the individual only that there is no record which is available to him pursuant to the Privacy Act of 1974.

(b) Individual requests for access to records which have been exempted from access pursuant to 5 U.S.C. 552a(k) shall be processed as follows:

(1) Requests for information classified by the Department of Justice pursuant to Executive Order 11652 require the responsible component of the Department to review the information to determine whether it continues to warrant classification under the criteria of sections 1 and 5(B), (C), (D), and (E) of the Executive Order. Information which no longer warrants classification under these criteria shall be declassified and made available to the individual if not otherwise exempt. If the information continues to warrant classification, the individual shall be advised that the information sought is classified, that it has been reviewed and continues to warrant classification, and that it has been exempted from access pursuant to 5 U.S.C. 552a(k)(1). Information which has been exempted pursuant to 5 U.S.C. 552a(j) and which is also classified shall be reviewed as required by this paragraph but the response to the individual shall be in the form prescribed by paragraph (a) of this section.

(2) Requests for information which has been exempted from disclosure pursuant to 5 U.S.C. 552a(k)(2) shall be responded to in the manner provided in paragraph (a) of this section unless a review of the information indicates that the information has been used or is being used to deny the individual any right, privilege or benefit for which he is eligible or to which he would otherwise be entitled under federal law. In that event, the individual shall be advised of the existence of the record and shall be provided the information except to the extent it would identify a confidential source. If and only if information identifying a confidential source can be deleted or the

pertinent parts of the record summarized in a manner which protects the identity of the confidential source, the document with deletions made or the summary shall be furnished to the requester.

(3) Information compiled as part of an employee background investigation which has been exempted pursuant to 5 U.S.C. 552a(k)(5) shall be made available to an individual upon request except to the extent that it identifies a confidential source. If and only if information identifying a confidential source can be deleted or the pertinent parts of the record summarized in a manner which protects the identity of the confidential source, the document with deletions made or the summary shall be furnished to the requester.

(4) Testing or examination material which has been exempted pursuant to 5 U.S.C. 552a(k)(6) shall not be made available to an individual if disclosure would compromise the objectivity or fairness of the testing or examination process but shall be made available if no such compromise possibility exists.

§ 16.43 Special access procedures.

(a) *Records of other agencies.* When information sought from a system of records in the Department of Justice includes information:

(1) That has been classified pursuant to Executive Order 11652, the request shall be referred to the appropriate classifying authority pursuant to 28 CFR 17.61 and the individual requesting the record shall be so advised unless the record is also exempt from disclosure pursuant to 5 U.S.C. 552a(j) or (k);

(2) That has been furnished by another component of the Department, the request shall be referred to the component originating the information for a decision as to access or correction;

(3) That has been furnished by another agency, the Department shall consult the other agency before granting access or making a correction and may refer the request to the other agency if referral will provide more expeditious access or correction, but the requester shall be notified of the referral.

(b) *Medical Records.* When an individual requests medical records concerning himself, which are not otherwise exempt from disclosure, the system manager shall, if deemed necessary, advise the individual that records will be provided only to a physician designated in writing by the individual. Upon receipt of the designation, the system manager will permit the physician to review the records or to receive copies of the records by mail, upon proper verification of identity. The determination of which records should be made available directly to the individual and which records should not be disclosed because of possible harm to the individual shall be made by the physician.

§ 16.44 Requests for accounting of record disclosures.

At the time of his request for access or correction or at any other time, an individual may request an accounting of disclosures made of his record outside the Department of Justice. Requests for accounting shall be directed to the system manager or other person specified in the "Notices of Records Systems." Any available accounting, whether kept in accordance with the requirements of the Privacy Act or under procedures established prior to September 27, 1975 shall be made available to the individual except that an accounting need not be made available if it relates to: (a) Records with respect to which no accounting need be kept (see § 16.50(c) infra); (b) a disclosure made to a law enforcement agency pursuant to 5 U.S.C. 552a(b)(7); (c) an accounting which has been exempted from disclosure pursuant to 5 U.S.C. 552a(j) or (k).

§ 16.45 Notice of access decisions; time limits.

(a) *Responsibility for notice.* The head of the component maintaining the system from which information is sought or his delegate has responsibility for determining whether access to records is available under the Privacy Act and for notifying the individual of that determination in accordance with these regulations. If access is denied because of an exemption, the responsible person shall notify the individual that he may appeal that determination to the Assistant Attorney General, Office of Legal Policy within thirty working days of the receipt of the determination.

(b) *Time limits for access determinations.* The following time limits shall be applicable to requests for access to information pursuant to the Privacy Act of 1974:

(1) Any request concerning a single system of records all of which are maintained at the same location and none of which requires consultation with another component or agency shall be responded to within 20 working days unless the records requested exceed the equivalent of 100 pages.

(2) Any request concerning a single system of records some of which require consultation with another component or agency shall be responded to within 25 working days unless the records requested exceed the equivalent of 100 pages.

(3) Any request involving several systems of records or one or more systems maintained at different locations shall be responded to within 40 working days.

(4) Any request involving the equivalent of 100 pages or more, whether maintained in one system or several systems, shall be responded to within 40 working days.

(5) If a request under paragraph (b) (2), (3) or (4) of this section presents unusual difficulties in determining whether the records involved are exempt from disclosure, the Assistant Attorney General, Office of Legal Policy, upon written request of the responsible person, may extend the time period established by these regulations for an additional 15 working days.

[Order No. 627-75, 40 FR 50642, Oct. 30, 1975, as amended by Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

§ 16.46 Fees for copies of records.

(a) *When charged.* Fees pursuant to 31 U.S.C. 483a and 5 U.S.C. 552a(f)(5) shall be charged according to the schedules contained in paragraph (b) of this section for actual copies of records provided to individuals unless the responsible person determining access, in his discretion, waives the fee for good cause (such as the inability of the individual to pay) or a separate fee schedule is established for an exempt system. Fees shall not be charged where they would amount, in the aggregate, to less than $3.

(b) *Fees charged.* Fees may only be assessed for actual copies of materials furnished pursuant to the Privacy Act in accordance with the following schedule:

(1) For copies of documents (maximum of 10 copies will be supplied), $0.10 per page;

(2) For computer material charges:

(i) One-part paper per 1,000 pages	$11.00
(ii) Two-part paper per 1,000 pages	22.80
(iii) Three-part paper per 1,000 pages	36.17
(iv) Four-part paper per 1,000 pages	48.32
(v) Five-part paper per 1,000 pages	63.97
(vi) Stock Hollerith cards per 1,000	1.98
(vii) Magnetic tape per reel	10.75
(viii) Disk pack, each	775.00

(3) For tape recordings and other audio records:

(i) 45 minute cassette	$0.56
(ii) 60 minute cassette	.60
(iii) 90 minute cassette	.77

(4) For materials other than the common ones described in paragraphs (b) (1), (2) and (3) of this section, the direct costs of such materials to the government may be charged, but only if the requester has been notified of such cost before it is incurred.

(c) *Notice of anticipated charges.* Where it is anticipated that access fees chargeable under this section will amount to more than $25, and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the requester shall be notified of the amount of the anticipated fees before copies are made. The notification shall offer the requester the opportunity to confer with Department personnel with the object of reformulating the request so as to meet his needs at lower cost.

(d) *Form of payment.* Payment should be made by check or money order payable to the Department of Justice. No employee of the Depart-

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ment of Justice is authorized to accept payment of fees in cash.

(e) *Advance deposit.* Where the anticipated fee chargeable under this section exceeds $25, an advance deposit of part or all of the anticipated fee may be required.

§ 16.47 Appeals from denials of access.

An individual who has been denied access to records concerning him may appeal that decision to the Assistant Attorney General, Office of Legal Policy, by filing a written appeal within 30 working days of the receipt of the denial. If the denial of access was made by a responsible person in the Office of the Assistant Attorney General, Office of Legal Policy, the appeal shall be to the Attorney General. The appeal shall be marked on its face and on the face of the envelope "Privacy Appeal—Denial of Access," and shall be addressed to the Office of the Assistant Attorney General, Office of Legal Policy, U.S. Department of Justice, Washington, D.C. 20530, or, if an appeal from a denial by the Associate Attorney General, to the Assistant Attorney General, Office of Legal Counsel, at the same address. Appeals shall be determined in thirty working days unless the appropriate official, by notice to the individual, extends that period for an additional thirty working days because of the volume of records requested, the scattered location of records, the need to consult other agencies, or the difficulty of the legal issues involved, or other administrative difficulty.

[Order No. 627-75, 40 FR 50642, Oct. 30, 1975, as amended by Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

§ 16.48 Requests for correction of records.

(a) *How Made.* Unless a record is exempted from correction, an individual may request amendment or correction of a record concerning him by addressing his request to the person responsible for the system in which the record is maintained either in person or by mail. The request must indicate the particular record involved, the nature of the correction sought, and the justification for the correction or amendment. Requests made by mail should be addressed to the person specified in the Notice of Systems of Records published by the General Services Administration and shall be clearly marked on the request and on the envelope "Privacy Correction Request." Where the individual believes that the same record appears in more than one system, he should address his request to each person responsible for a system of records which may contain the record he seeks to correct.

(b) *Initial determination.* Within 10 working days of the receipt of the request, the appropriate Department official shall advise the individual that his request has been received. If the record is to be amended or corrected, the system manager may so advise the individual but if correction is refused, in whole or in part, it must be done by the head of the component in which the record is located or his delegate. If a correction is to be made, the individual shall be advised of his right to obtain a copy of the corrected record upon request. If a correction or amendment is refused, in whole or in part, the individual shall be so advised, shall be given reasons for the refusal, and shall be advised of his right to appeal the refusal to the Assistant Attorney General, Office of Legal Policy, in accordance with the procedures set forth in this section.

(c) *Appeals.* A refusal, in whole or in part, to amend or correct a record may be appealed to the Assistant Attorney General, Office of Legal Policy, within 30 days of the receipt of notice of the refusal. If the refusal to correct was made by the Office of the Assistant Attorney General, Office of Legal Policy, the appeal shall be to the Attorney General. Appeals shall be in writing, shall set forth the specific item of information sought to be corrected, and the individual's documentation justifying the correction. Appeals shall be addressed to the Office of the Assistant Attorney General, Office of Legal Policy, U.S. Department of Justice, Washington, D.C. 20530 or, if an appeal from a denial by the Associate Attorney General to the Assistant Attorney General, Office of Legal Counsel, at the same address. They shall be clearly marked on the appeal and on the envelope, "Privacy Correction Appeal." The appeal shall be decided within 30 working days unless the appropriate official shall extend the time for an additional 30 working days because of the need to obtain additional information, the volume of records involved, or the complexity of the issue, or other administrative difficulty. The requester shall be advised in advance of any such extension and shall be given the reasons therefor.

(d) *Appeal determinations.* If the Assistant Attorney General, Office of Legal Policy or Attorney General determines that an amendment or correction is not warranted on the facts, he shall advise the individual of his refusal to authorize correction or amendment of the record, in whole or in part, and shall advise the individual of his right to provide for the record a "Statement of Disagreement." The individual shall be advised also of his right to judicial review pursuant to the Privacy Act of 1974.

(e) *Statements of disagreement.* Statements of Disagreement may be furnished by the individual within 30 working days of the date of receipt of the notice of refusal of the Assistant Attorney General, Office of Legal Policy, or Attorney General to authorize correction. They shall be addressed to the Office of the Assistant Attorney General, Office of Legal Policy, U.S. Department of Justice, Washington, D.C. 20530. Statements may not exceed one typed page per fact disputed. Statements exceeding this limit will be returned to the requester for condensation. Upon receipt of a statement of disagreement in accordance with this section, the Assistant Attorney General, Office of Legal Policy, shall take steps to insure that the statement is included in the system or systems of records in which the disputed item is maintained and that the original record is so marked as to indicate that there is a statement of disagreement and where, within the system of records, that statement may be found.

(f) *Notices of correction or disagreement.* When a record has been corrected the system manager shall, within thirty working days thereof, advise all prior recipients of the record whose identity can be determined pursuant to the accounting required by the Privacy Act or any other accounting previously made, of the correction. Any dissemination of a record after the filing of a statement of disagreement shall be accompanied by a copy of that statement. Any statement of the agency giving reasons for refusing to correct shall be included in the file.

[Order No. 627-75, 40 FR 50642, Oct. 30, 1975; 40 FR 52007, Nov. 7, 1975; as amended by Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

§ 16.49 Records not subject to correction.

The following records are not subject to correction or amendment by individuals:

(a) Transcripts or written statements made under oath;

(b) Transcripts of Grand Jury Proceedings, judicial or quasi-judicial proceedings which form the official record of those proceedings;

(c) Pre-sentence reports comprising the property of the courts but maintained in agency files; and

(d) Records duly exempted from correction by notice published in the FEDERAL REGISTER.

§ 16.50 Accounting for disclosures.

(a) As soon as possible, but not later than September 27, 1975, each system manager, with the approval of the head of his component, shall establish a system of accounting for all disclosures of records, either orally or in writing, made outside the Department of Justice. Accounting procedures may be established in the least expensive and most convenient form that will permit the system manager to advise individuals, promptly upon request, of the persons or agencies to which records concerning them have been disclosed.

(b) Accounting records, at a minimum, shall include the identification of the particular record disclosed, the name and address of the person or agency to which disclosed, and the date of the disclosure. Accounting records shall be maintained until the record is destroyed or transferred to the Archives.

(c) Accounting is not required to be kept for disclosures made within the

Department of Justice or disclosures made pursuant to the Freedom of Information Act.

§ 16.51 Notices of ubpoenas and emergency disclosures.

(a) *Subpoenas.* When records concerning an individual are subpoenaed by a Grand Jury, Court, or quasi-judicial agency, the official served with the subpoena shall be responsible for assuring that notice of its issuance is provided to the individual. Notice shall be provided within 10 days of the service of the subpoena or, in the case of a Grand Jury subpoena, within 10 days of its becoming a matter of public record. Notice shall be mailed to the last known address of the individual and shall contain the following information: The date of the subpoena is returnable, the court in which it is returnable, the name and number of the case or proceeding, and the nature of the information sought. Notice of the issuance of subpoenas is not required if the system of records has been exempted from the notice requirement, pursuant to 5 U.S.C. 552a(j), by a Notice of Exemption published in the FEDERAL REGISTER.

(b) *Emergency disclosures.* If information concerning an individual has been disclosed to any person under compelling circumstances affecting health or safety the individual shall be notified at his last known address within 10 working days of the disclosure. Notification shall include the following information: The nature of the information disclosed, the person or agency to whom it was disclosed, the date of the disclosure, and the compelling circumstances justifying the disclosure. Notification shall be given by the officer who made or authorized the disclosure.

§ 16.52 Information forms.

(a) *Review of forms.* Except for forms developed and used by the Office of Justice Assistance, Research and Statistics, the Drug Enforcement Administration, the Immigration and Naturalization Service, the Bureau of Prisons, the Federal Bureau of Investigation and the U.S. Marshals Service for the collection of information from individuals, the Assistant Attorney General for Administration shall be responsible for reviewing all forms developed and used by the Department of Justice to collect information from individuals. The Office of Justice Assistance, Research and Statistics, the Drug Enforcement Administration, the Immigration and Naturalization Service, the Bureau of Prisons, the Federal Bureau of Investigation and the U.S. Marshals Service shall each be responsible for the review of forms it uses to collect information from individuals.

(b) *Scope of review.* The responsible offices shall review each form for the purpose of eliminating any requirement for information that is not relevant and necessary to carry out an agency function and to accomplish the following objectives:

(1) To insure that no information concerning religion, political beliefs or activities, association memberships (other than those required for a professional license), or the exercise of other First Amendment rights is required to be disclosed unless such requirement of disclosure is expressly authorized by statute or is pertinent to and within the scope of an authorized law enforcement activity;

(2) To insure that the form or accompanying statement makes clear to the individual which information he is required by law to disclose and the authority for that requirement and which information is voluntary;

(3) To insure that the form or accompanying statement states clearly the principal purpose or purposes for which the information is being collected, and summarizes concisely the routine uses that will be made of the information;

(4) To insure that the form or accompanying statement clearly indicates to the individual the effect in terms of rights, benefits or privileges of not providing all or part of the requested information; and

(5) To insure that any form requesting disclosure of a Social Security Number, or an accompanying statement, clearly advises the individual of the statute or regulation requiring disclosure of the number or clearly advises the individual that disclosure is voluntary and that no consequence

will flow from his refusal to disclose it, and the uses that will be made of the number whether disclosed mandatorily or voluntarily.

(c) *Revision of forms.* Any form which does not meet the objectives specified in the Privacy Act and in this section, shall be revised to conform thereto. If revision, printing and distribution cannot be accomplished prior to September 27, 1975, a separate statement shall be prepared to accompany each form advising the individual that the form is not in compliance with the Privacy Act and specifying the portions thereof which are not in compliance. The statement shall include all the information necessary to accomplish the objectives specified in the Privacy Act and this section.

[Order No. 627-75, 40 FR 50642, Oct. 30, 1975, as amended by Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

§ 16.53 Contracting records systems.

(a) No component of the Department shall contract for the operation of a record system by or on behalf of the agency without the express approval of the Attorney General.

(b) Any contract which is approved shall contain the standard contract requirements promulgated by the General Services Administration to insure compliance with the requirements imposed by the Privacy Act of 1974. The contracting agency shall have responsibility for insuring that the contractor complies with the contract requirements relating to privacy.

§ 16.54 Security of records systems.

(a) The Assistant Attorney General for administration shall have responsibility for developing Department regulations governing the security of systems of records. Regulations relating to the security of automated systems shall be consistent with the guidelines developed by the National Bureau of Standards.

(b) Each system manager, with the approval of the head of his component, shall establish administrative and physical controls, consistent with Department regulations, to insure the protection of records systems from unauthorized access or disclosure and from physical damage or destruction. The controls instituted shall be proportional to the degree of sensitivity of the records but at a minimum must insure that the records are enclosed in a manner to protect them from public view, that the area in which the records are stored is supervised during all business hours to prevent unauthorized personnel from entering the area or obtaining access to the records, and that the records are reasonably inaccessible to unauthorized persons outside of business hours.

(c) Each system manager, with the approval of the head of his component shall adopt access restrictions to insure that only those individuals within the agency who have a need to have access to the records for the performance of their duties have access to them. Procedures shall also be adopted to prevent accidental access to or dissemination of records.

§ 16.55 Use and collection of Social Security numbers.

(a) Each system manager of a system of records which utilizes the Social Security number as a method of identification without statutory authorization, or authorization by regulation adopted prior to January 1, 1975, shall take steps to revise the system to avoid future collection and use of the Social Security number.

(b) The head of each component of the Department shall take such measures as are necessary to insure that employees authorized to collect information from individuals are advised that individuals may not be required to furnish Social Security numbers without statutory or regulatory authorization and that individuals who are requested to provide Social Security numbers voluntarily must be advised that furnishing the number is not required and that no penalty or denial of benefits will flow from the refusal to provide it.

§ 16.56 Employee standards of conduct with regard to privacy.

(a) The head of each component of the Department shall be responsible for assuring that employees subject to his supervision are advised of the provisions of the Privacy Act, including the criminal penalties and civil liabilities provided therein, and that such employees are made aware of their responsibilities to protect the security of personal information, to assure its accuracy, relevance, timeliness and completeness, to avoid unauthorized disclosure either orally or in writing, and to insure that no system of records retrieved by individual identifier, no matter how small or specialized, is maintained without public notice.

(b) Except to the extent permitted pursuant to the Privacy Act, employees of the Department of Justice shall:

(1) Collect no information of a personal nature from individuals unless authorized to collect it to achieve a function or carry out a responsibility of the Department;

(2) Collect from individuals only that information which is necessary to Department functions or responsibilities;

(3) Collect information, wherever practicable, directly from the individual to whom it relates;

(4) Inform individuals from whom information is collected of the authority for collection, the purposes thereof, the uses that will be made of the information, and the effects, both legal and practical, of not furnishing the information;

(5) Neither collect, maintain, use nor disseminate information concerning an individual's religious or political beliefs or activities or his membership in associations or organizations, unless: (i) The individual has volunteered such information for his own benefit; (ii) the information is expressly authorized by statute to be collected, maintained, used or disseminated; or (iii) the activities involved are pertinent to and within the scope of an authorized investigation, adjudication or correctional activity;

(6) Advise their supervisors of the existence or contemplated development of any record system which retrieves information about individuals by individual identifier;

(7) Wherever required by the Act, maintain an accounting, in the prescribed form, of all dissemination of personal information outside the Department, whether made orally or in writing;

(8) Disseminate no information concerning individuals outside the Department except when authorized by 5 U.S.C. 552a, including pursuant to a routine use published in the FEDERAL REGISTER;

(9) Maintain and process information concerning individuals with care in order to insure that no inadvertent disclosure of the information is made either within or without the Department; and

(10) Call to the attention of the proper Department authorities any information in a system maintained by the Department which is not authorized to be maintained under the provisions of the Privacy Act of 1974, including information on First Amendment activities and information that is inaccurate, irrelevant or so incomplete as to risk unfairness to the individual concerned.

(c) Heads of components within the Department shall, at least annually, review the record systems subject to their supervision to insure compliance with the provisions of the Privacy Act of 1974.

§ 16.57 Relationship of Privacy Act and the Freedom of Information Act.

(a) Issuance of this section and actions considered or taken pursuant hereto are not to be deemed a waiver of the Government's position that the materials in question are subject to all of the exemptions contained in the Privacy Act. By providing for exemptions in the Act, Congress conferred upon each agency the option, at the discretion of the agency, to grant or deny access to exempt materials unless prohibited from doing so by any other provision of law. Releases of records under this section, beyond those mandated by the Privacy Act, are at the sole discretion of the Assistant Attorney General, Office of Legal Policy, and of those persons to whom authority hereunder may be delegated. Authority to effect such discretionary releases of records and to deny requests for those records as an initial matter is hereby delegated to the appropriate system managers as per the Notices of Systems of Records published in 40

FEDERAL REGISTER 167, pages 38703-38801 (August 27, 1975).

(b) Any request by an individual for information pertaining to himself shall be processed solely pursuant to this Subpart D. To the extent that the individual seeks access to records from systems of records which have been exempted from the provisions of the Privacy Act, the individual shall receive, in addition to access to those records he is entitled to receive under the Privacy Act and as a matter of discretion as set forth in paragraph (a) of this section, access to all records within the scope of his request to which he would have been entitled under the Freedom of Information Act, 5 U.S.C. 552, but for the enactment of the Privacy Act and the exemption of the pertinent systems of records pursuant thereto. Only fees set forth in § 16.46 may be charged a requester as to any records to which access is granted pursuant to the provisions of this subsection.

(c) When an individual requests access to records pertaining to criminal, national security or civil investigative activities of the Federal Bureau of Investigation which are contained in systems of records exempted under provisions of the Privacy Act, such requests shall be processed as follows:

(1) Where the investigative activities involved have been reported to F.B.I. Headquarters, records maintained in the F.B.I.'s Central files will be processed; and,

(2) Where the investigative activities involved have not been reported to F.B.I. Headquarters, records maintained in files of the Field Office identified by the requester will be processed.

[Order No. 627-75, 40 FR 50642, Oct. 30, 1975, as amended by Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

APPENDIX TO SUBPART D—DELEGATION OF AUTHORITY

1. By virtue of the authority vested in me by Section 16.45 of Title 28 of the Code of Federal Regulations, the authority to deny requests under the Privacy Act of 1974 is delegated to the occupant of the position of Chief, Freedom of Information-Privacy Acts Section, Records Management Division, Federal Bureau of Investigation. This same authority is delegated to the occupant of the position of Special Agent in Charge of each of the field offices of the Federal Bureau of Investigation for records in their custody and control.

2. This directive is effective June 9, 1981.

[46 FR 36140, July 14, 1981]

Subpart E—Exemption of Records Systems Under the Privacy Act

AUTHORITY: 5 U.S.C. 552a.

SOURCE: Order No. 645-76, 41 FR 12640, Mar. 26, 1976, unless otherwise noted.

§ 16.71 Exemption of the Office of the Deputy Attorney General Systems.

(a) The following systems of records are exempt from 5 U.S.C. 552a(d)(1) and (e)(1):

(1) Appointed Assistant United States Attorneys Personnel System (JUSTICE/DAG-001).

(2) Assistant United States Attorneys Applicant Records System (JUSTICE/DAG-002).

(3) Presidential Appointee Candidate Records System (JUSTICE/DAG-009).

(4) Presidential Appointee Records System (JUSTICE/DAG-010).

(5) Special Candidates for Presidental Appointments Records System (JUSTICE/DAG-011).

(6) United States Judges Records System (JUSTICE/DAG-014).

These exemptions apply only to the extent that information in those systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d)(1) because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning a candidate for a judgeship or assistant U.S. Attorney position. Permitting access to the information supplied by persons after a promise of confidentiality has been given, could reveal the identity of the source of the information and constitute a breach of the promised confidentiality on the part of the Department of Justice. Such breaches ultimately would restrict the free flow of information vital to a de-

termination of a candidate's qualifications and suitability.

(2) From subsection (e)(1) because in the collection of information for investigation and evaluative purposes, it is impossible to determine in advance what exact information may be of assistance in determining the qualifications and suitability of a candidate. Information which may appear irrelevant, when combined with other apparently irrelevant information, can on occasion, provide a composite picture of a candidate for a position which assists in determining whether that candidate should be nominated for appointment.

(c) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e)(1), (2), and (3), (e)(4) (G) and (H), (e)(5) and (8), (f) and (g):

(1) The Criminal Investigative Records System (JUSTICE/DAG-007). This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), and (k)(5).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From paragraph (c)(3) of this section because the release of accounting disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement.

(2) From paragraph (c)(4), (d), (e)(4) (G), and (H), (f) and (g) of this section because these provisions concern individual access to records and such access might compromise ongoing investigations reveal investigatory techniques and confidential informants, and invade the privacy of private citizens who provide information in connection with a particular investigation.

(3) From paragraph (e)(1) of this section because information received in the course of an international criminal investigation may involve a violation of state or local law, and it is beneficial to maintain this information to provide investigative leads to state and local law enforcement agencies.

(4) From paragraph (e)(2) of this section because collecting information from the subject of criminal investigations would thwart the investigation by placing the subject on notice.

(5) From paragraph (e)(3) of this section because supplying an individual with a statement of the intended use of the requested information could compromise the existence of a confidential investigation, and may inhibit cooperation.

(6) From paragraph (e)(5) of this section because the vast majority of these records come from local criminal justice agencies and it is administratively impossible to ensure that the reords comply with this provision. Submitting agencies are, however, urged on a continuing basis to ensure that their records are accurate and include all dispositions.

(7) From paragraph (e)(8) of this section because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by AAG/A Order No. 48-80, 45 FR 32670, May 19, 1980]

§ 16.76 Exemption of Justice Management Division.

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) Controlled Substances Act Nonpublic Records (JUSTICE/JMD-002).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 552 a(j).

(b) Exemption from subsection (d) is justified for the following reasons:

(1) Pub. L. 91-513 (Controlled Substances Act), Sec. 404(b) states that the nonpublic record "shall be retained by the Department of Justice solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection." It is therefore maintained that it is the intent of Congress that these nonpublic records, by definition, receive no further exposure.

(c) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) Security Clearance Information System (SCIS) (JUSTICE/JMD-008)—Limited access.

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 552a (j) and (k).

(d) Exemption from subsection (d) is justified for the following reason:

(1) Access to records in the system would reveal the identity(ies) of the source(s) of information collected in the course of a background investigation. Such knowledge might be harmful to the source who provided the information as well as violate the explicit or implicit promise of confidentiality made to the source during the investigation.

(e) Consistent with the legislative purpose of the Privacy Act of 1974, the Justice Management Division will grant access to nonexempt material in SCIS records which are maintained by the Security Programs Staff. Disclosure will be governed by the Department's Privacy Regulations, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from this system will be made on a case-by-case basis."

(f) The following system of records is exempt from 5 U.S.C. 552a(d);

(1) Freedom of Information/Privacy Act Records System (JUSTICE/JMD-019).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(g) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because that portion of the Freedom of Information/Privacy Act Records System that consists of investigatory materials compiled for law enforcement purposes is being exempted from access and contest; the provision for disclosure of accounting is not applicable.

(2) From subsection (d) because of the need to safeguard the identity of confidential informants and avoid interference with ongoing investigations or law enforcement activities by preventing premature disclosure of information relating to those efforts.

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 688-77, 42 FR 9999, Feb. 18, 1977; Order No. 899-80, 45 FR 43703, June 30, 1980]

§ 16.79 Exemption of Pardon Attorney System.

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) Executive Clemency Files (JUSTICE/OPA-001).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j).

(b) Exemption from subsection (d) is justified for the following reasons:

(1) Executive clemency files contain investigatory and evaluative reports relating to applicants for Executive clemency. Release of such information to the subject would jeopardize the integrity of the investigative process, invade the right of candid and confidential communications among officials concerned with recommending clemency decisions to the President, and disclose the identity of persons who furnished information to the Government under an express or implied promise that their identities would be held in confidence.

(2) The purpose of the creation and maintenance of these files is to enable the Pardon Attorney to prepare for the President's ultimate decisions on matters which are within the President's exclusive jurisdiction by virtue of Article II, section 2, clause 1 of the Constitution, which commits pardons

to the exclusive discretion of the President.

§ 16.80 Exemption of Office of Professional Responsibility System—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5) and (8), (f) and (g):

(1) Office of Professional Responsibility Record Index (JUSTICE/OPR-001).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because release of the disclosure accounting would enable the subject of an investigation to gain information concerning the existence, nature and scope of the investigation and seriously hamper law enforcement efforts.

(2) From subsections (c)(4), (d), (e)(4)(G) and (H), (f) and (g) because these provisions concern individual access to records and such access might compromise ongoing investigations, reveal confidential informants and constitute unwarranted invasions of the personal privacy of third persons who provide information in connection with a particular investigation.

(3) From subsections (e)(1) and (5) because the collection of information during an investigation necessarily involves material pertaining to other persons or events which is appropriate in a thorough investigation, even though portions thereof are not ultimately connected to the person or event subject to the final action or recommendation of the Office of Professional Responsibility.

(4) From subsection (e)(2) because collecting the information from the subject would thwart the investigation by placing the subject on notice of the investigation.

(5) From subsections (e)(3) and (e)(8) because disclosure and notice would provide the subject with substantial information which could impede or compromise the investigation. For example, an investigatory subject occupying a supervisory position could, once made aware that a misconduct investigation was ongoing, put undue pressure on subordinates so as to preclude their cooperation with investigators.

[AAG/A Order No. 58-81, 46 FR 3509, Jan. 15, 1981]

§ 16.81 Exemption of United States Attorneys Systems—Limited access.

(a) The following systems of records are exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5) and (8), (f), (g) and (h):

(1) Citizen Complaint Files (JUSTICE/USA-003).

(2) Civil Case Files (JUSTICE/USA-005).

(3) Consumer Complaints (JUSTICE/USA-006).

(4) Criminal Case Files (JUSTICE/USA-007).

(5) Kline—District of Columbia and Maryland Stock and Land Interrelationship Filing System (JUSTICE/USA-010).

(6) Major Crimes Division Investigation Files (JUSTICE/USA-011).

(7) Prosecutor's Management Information System (PROMIS) (JUSTICE/USA-012).

(8) U.S. Attorney, District of Columbia Superior Court Division, Criminal Files (JUSTICE/USA-014).

(9) Pre-Trial Diversion Program Files (JUSTICE/USA-015).

These exemptions apply to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a (j) and (k).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for these systems, would permit the subject of a criminal investigation and/or civil case or matter under investigation, litigation, regulatory or administrative review or action, to obtain valuable information concerning the nature of that investigation, case or matter and

present a serious impediment to law enforcement or civil legal activities.

(2) From subsection (c)(4) since an exemption is being claimed for subsection (d), this subsection will not be applicable.

(3) From subsection (d) because access to the records contained in these systems would inform the subject of criminal investigation and/or civil investigation, matter or case of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection, apprehension or legal obligations, and present a serious impediment to law enforcement and other civil remedies.

(4) From subsection (e)(1) because in the course of criminal investigations and/or civil investigations, cases or matters, the United States Attorneys often obtain information concerning the violation of laws or civil obligations other than those relating to an active case or matter. In the interests of effective law enforcement and civil litigation, it is necessary that the United States Attorneys retain this information since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought within the United States Attorneys' offices.

(5) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection, apprehension or legal obligations and duties.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(7) From subsections (e)(4) (G) and (H) because these systems of records are exempt from individual access pursuant to subsections (j) and (k) of the Privacy Act of 1974.

(8) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(9) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the United States Attorneys' ability to issue subpoenas and could reveal investigative techniques and procedures.

(10) From subsection (f) because these systems of records have been exempted from the access provisions of subsection (d).

(11) From subsections (g) and (h) because these systems of records are complied for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(c) Consistent with the legislative purpose of the Privacy Act of 1974, the Executive Office for United States Attorneys will grant access to nonexempt material in records which are maintained by the United States Attorneys. Disclosure will be governed by the Department's Privacy Regulations, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal, civil or regulatory violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

(d) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G), (H) and (I), (e) (5) and (8), (f), and (g) of 5 U.S.C. 552a; in addition, the following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a (k)(1) and (k)(2) from subsections (c) (3), (d), (e) (1), (e) (4) (G), (H) and (I), and (f) of 5 U.S.C. 552a:

Freedom of Information/Privacy Act Records (JUSTICE/USA-009).

These exemptions apply only to the extent that the records contained in this system have been obtained from other systems of records maintained by the U.S. Attorneys Offices for which exemptions from one or more of the foregoing provisions of the Privacy Act of 1974 have been promulgated. The exemption claimed for this system of records applies only to records obtained from such other U.S. Attorneys Offices systems and only to the same extent as the records contained in such other systems have been exempted.

(e) The system of records listed under paragraph (d) of this section is exempted for the following reasons:

(1) In the course of processing requests for records pursuant to the Freedom of Information Act (5 U.S.C. 522) or for access or correction of records pursuant to the Privacy Act (5 U.S.C. 552a), it is frequently necessary to search for records in systems of records for which exemptions have been claimed pursuant to 5 U.S.C. 552a (j) or (k). When records are located in said systems, it is frequently necessary to prepare copies for the purpose of consulting with agency personnel or with other agencies, either with regard to determining whether or to what extent the records should be disclosed, or access provided, or correction made or denied or for review in the event of administrative appeal or judicial review.

(2) If records otherwise exempt pursuant to published rules should lose their exempt character when taken from such exempt systems for the purpose of compliance with the Freedom of Information Act and the Privacy Act in reviewing such records and making a determination with regard to disclosure, access, and the Department of Justice in claiming correction, the purpose of the Privacy Act in providing such exemptions and such exemptions would be defeated and nullified. The proper, efficient, and timely processing of citizens' requests pursuant to said Acts would be hindered and impeded.

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 688-77, 42 FR 9999, Feb. 18, 1977; Order No. 716-77, 42 FR 23506, May 9, 1977; Order No. 738-77, 42 FR 38177, July 27, 1977]

§ 16.84 Exemption of Immigration Appeals System.

(a) The following system of records is exempt from 5 U.S.C. 552a(d) (2), (3) and (4):

(1) Decisions of the Board of Immigration Appeals (JUSTICE/BIA-001).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsections (d) (2), (3) and (4) because the decisions reflected constitute official records of opinions rendered in quasi-judicial proceedings. Administrative due process could not be achieved by the ex parte "correction" of such opinions by the subject of the opinion.

§ 16.85 Exemption of U.S. Parole Commission—Limited access.

(a) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(2) and (3), (e)(4) (G) and (H), (e)(8), (f) and (g):

(1) Docket Scheduling and Control System (JUSTICE/USPC-001).

(2) Inmate and Supervision Files System (JUSTICE/USPC 003).

(3) Labor and Pension Case, Legal File, and General Correspondence System (JUSTICE/USPC-004).

(4) Statistical, Educational and Developmental System (JUSTICE/USPC-006).

(5) Workload Record, Decision Result, and Annual Report System (JUSTICE/USPC-007).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because revealing disclosure of accountings to inmates and persons on supervision could compromise legitimate law enforcement activities and U.S. Parole Commission responsibilities.

(2) From subsection (c)(4) because the exemption from subsection (d) will make notification of disputes inapplicable.

(3) From subsection (d) because this is essential to protect internal processes by which Commission personnel are able to formulate decisions and policies with regard to federal prisoners and persons under supervision, to prevent disclosures of information to federal inmates or persons on supervision that would jeopardize legitimate correctional interests of security, custody, supervision, or rehabilitation, to permit receipt of relevant information from other federal agencies, state and local law enforcement agencies, and federal and state probation and judicial offices, to allow private citizens to express freely their opinions for or against parole, to allow relevant criminal history type information of co-defendants to be kept in files, to allow medical, psychiatric and sociological material to be available to professional staff, and to allow a candid process of fact selection, opinion formulation, evaluation and recommendation to be continued by professional staff. The legal files contain case development material and, in addition to other reasons, should be exempt under the attorney-client privilege. Each labor or pension applicant has had served upon him the material in his file which he did not prepare and may see his own file at any time.

(4) From subsection (e)(2) because primary collection of information directly from federal inmates or persons on supervision about criminal sentence, criminal records, institutional performance, readiness for release from custody, or need to be returned to custody is highly impractical and inappropriate.

(5) From subsection (e)(3) because application of this provision to the operations and collection of information by the Commission which is primarily from sources other than the individual, is inappropriate.

(6) From subsections (e)(4) (G) and (H) because exemption from the access provisions of (d) makes publication of agency procedures under (d) inapplicable.

(7) From subsection (e)(8) because the nature of the Commission's activities renders notice of compliance with compulsory legal process impractical.

(8) From subsection (f) because exemption from the provisions of subsection (d) will render compliance with provisions of this subsection inapplicable.

(9) From subsection (g) because exemption from the provisions of subsection (d) will render the provisions on suits to enforce (d) inapplicable.

(c) Consistent with the legislative purpose of the Privacy Act of 1974 the U.S. Parole Commission will initiate a procedure whereby present and former prisoners and parolees may obtain copies of material in files relating to them that are maintained by the U.S. Parole Commission. Disclosure of the contents will be affected by providing copies of documents to requesters through the mails. Disclosure will be made to the same extent as would be made under the substantive exemptions of the Parole Commission and Reorganization Act of 1976 (18 U.S.C. 4208) and Rule 32 of the Federal Rules of Criminal Procedure. The procedure relating to disclosure of documents may be changed generally in the interest of improving the Commission's system of disclosure or when required by pending or future decisions and directions of the Department of Justice.

(5 U.S.C. 552a and 553)

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by AAG/A Order No. 14-78, 43 FR 45993, Oct. 5, 1978; Order No. 899-80, 45 FR 43703, June 30, 1980]

§ 16.88 Exemption of Antitrust Division Systems.

(a) The following systems of records are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G) and (H), and (f):

(1) Computerized Document Retrieval System—"United States v. International Business Machines" ("CDRS—IBM") (JUSTICE/ATR-002).

(2) Computerized Document Retrieval System—"Tire cases" ("CDRS—Tire Cases") (JUSTICE/ATR-003).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k). It is noted however, that the provisions of 5 U.S.C. 552a are not applicable to these systems by virtue of 5 U.S.C. 552a(d)(5).

(b) Exemption from the particular subsections are justified for the following reasons:

(1) Exemption from subsection (c)(3) is justified because these systems are maintained only in aid of on-going antitrust enforcement proceedings (e.g., pretrial/trial). Documents retrieved by using information ("key-words") stored electronically in these systems are, and will be required in the ordinary course of conducting all proceedings in "United States v. The Goodyear Tire & Rubber Company," Civil No. C-73-835 (N.D. Ohio), "United States v. The Firestone Tire & Rubber Company," Civil No. C- 73-836 (N.D. Ohio), and "United States v. International Business Machines," Civil No. 69-Civ.-200 (S.D. N.Y.). Consequently, in the course of such protracted and complex antitrust proceedings, the presentation, production or other routine and necessary disclosure of documents retrieved from these systems will be required to be made before the courts and as otherwise required by order of court or pursuant to binding rules of procedure.

(2) 5 U.S.C. 552a(d) does not apply to these systems by virtue of 5 U.S.C. 552a (d)(5). In addition, exemptions from subsections (d), (e)(4) (G) and (H), and (f), all related to matters concerned with individual access to information in systems of records, are justified under 5 U.S.C. 552a(k) because access to the documents retrievable from these systems and compiled for law enforcement purposes could result in the invasion of the privacy of private persons named or otherwise identified in such documents as well as the unjustified disclosure of commercial and financial information of a confidential nature obtained from various firms connected with or involved in the referenced proceedings.

(3) Exemption from subsection (e)(1) is justified because the collection of documents prior to and during the judicial proceedings necessarily involves the assemblage, indexing and storage in these types of systems of information relative to individuals who are not ultimately required to appear or otherwise connected with actual litigation."

(c) The following system of records is exempt from 5 U.S.C. 552a (c) (3), (d), (e)(4) (G) and (H), and (f).

(1) Antitrust Caseload Evaluation System (ACES)—Monthly Report. (Justice/ATR-009)

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(2). It is noted however that the provisions of 5 U.S.C. 552a are not applicable to these systems by virtue of 5 U.S.C. 552a(d)(5).

(d) Exemption from the particular subsections are justified for the following reasons:

(1) Exemption from subsection (c)(3) is justified because these systems are maintained in aid of ongoing antitrust enforcement investigations and proceedings. The release of the accounting of disclosures made under subsection (b) of the Act would permit the subject of an investigation of an actual or potential criminal or civil violation to determine whether he is the subject of an investigation. Disclosure of the accounting would there-

fore present a serious impediment to antitrust law enforcement efforts.

(2) 5 U.S.C. 552a(d) does not apply to these systems by virtue of 5 U.S.C. 552a(d)(5). In addition, exemptions from subsections (d), (e)(4) (G) and (H), and (f), all related to matters concerned with individual access to information in systems of records, are justified under 5 U.S.C. 552a(k)(2) because access to the information retrievable from this system and compiled for law enforcement purposes could result in the premature disclosure of the identity of the subject of an investigation of an actual or potential criminal or civil violation and information concerning the nature of that investigation. This information could enable the subject to avoid detection or apprehension. This would present a serious impediment to effective law enforcement since the subject could hinder or prevent the successful completion of the investigation.

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 688-77, 42 FR 10000, Feb. 18, 1977]

§ 16.90 Exemption of Civil Rights Division Systems.

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission (JUSTICE/CRT-007).

This exemption applies to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d) because this system contains investigatory material compiled by the Equal Opportunity Commission pursuant to its authority under 42 U.S.C. 2000e-8. 42 U.S.C. 2000e-8(e) and 44 U.S.C. 3508 make it unlawful to make public in any manner whatsoever any information obtained by the Commission pursuant to the authority.

(c) The following systems of records are exempt from 5 U.S.C. 552a (c)(3) and (d):

(1) Records Obtained by Office of Special Litigation Concerning Residents of Certain State Institutions (JUSTICE/CRT-005).

(2) Files of Federal Programs Section, Civil Rights Division (JUSTICE/CRT-006).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting for disclosure pursuant to the routine uses published for this system may enable the subject of an investigation to gain valuable information concerning the nature and scope of the investigation and seriously hamper law enforcement efforts.

(2) From subsection (d) because freely permitting access to records in this system would compromise ongoing investigations and reveal investigatory techniques. In addition, these records may be subject to protective orders entered by federal courts to protect their confidentiality. Many of the records contained in these systems are copies of documents which are the property of state agencies and where obtained under express or implied promises to strictly protect their confidentiality.

(e) The following system of records is exempt from 5 U.S.C. 552a (c)(3), (d) and (g):

(1) Central Civil Rights Division Index File and Associated Records (JUSTICE/CRT-001).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j) and (k).

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsections (c)(3) and (d) for the reasons listed in § 16.90(d) (1) and (2) of this part.

(2) From subsection (g) because exemption from the provision of subsection (d) will render the provisions on suits to enforce (d) inapplicable."

(g) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3), (d), and (g) of 5 U.S.C. 552a; in addition, the following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a (k)(2) from subsections (c)(3), and (d) of 5 U.S.C. 552a: Freedom of Information/Privacy Act Records (JUSTICE/CRT-010).

These exemptions apply only to the extent that the records contained in this system have been obtained from other systems of records maintained by the Civil Rights Division for which exemptions from one or more of the foregoing provisions of the Privacy Act of 1974 have been promulgated. The exemptions claimed for this system of records apply only to records obtained from such other Civil Rights Division systems and only to the same extent as the records contained in such other systems have been exempted.

(h) The system of records listed under paragraph (g) of this section is exempted for the following reasons:

(1) In the course of processing requests for records pursuant to the Freedom of Information Act (5 U.S.C. 552) or for access or correction of records pursuant to the Privacy Act (5 U.S.C. 552a), it is frequently necessary to search for records in systems of records for which exemptions have been claimed pursuant to 5 U.S.C. 552a (j) or (k). When records are located in said systems, it is frequently necessary to prepare copies for the purpose of consulting with agency personnel or with other agencies, either with regard to determining whether or to what extent the records should be disclosed, or access provided, or correction made or denied, or for review in the event of administrative appeal or judicial review.

(2) If records otherwise exempt pursuant to published rules should lose their exempt character when taken from such exempt systems for the purpose of compliance with the Freedom of Information Act and the Privacy Act in reviewing such records and making determination with regard to disclosure, access, and correction, the purpose of the Privacy Act in providing such exemptions, and of the Department of Justice in claiming such exemptions would be defeated and nullified. The proper, efficient, and timely processing of citizens' requests pursuant to said Acts would be hindered and impeded.

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 688-77, 42 FR 10000, Feb. 18, 1977]

§ 16.91 Exemption of Criminal Division Systems—Limited access, as indicated.

(a) The following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G), (H) and (I), (e) (5) and (8), (f) and (g) of 5 U.S.C. 552a; in addition, the following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a (k)(1) and (k)(2) from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a:

(1) Central Criminal Division, Index File and Associated Records System of Records (JUSTICE/CRM-001)—Limited Access.

(2) General Crimes Section, Criminal Division, Central Index File and Associated Records System of Records (JUSTICE/CRM-004)—Limited Access.

These exemptions apply to the extent that information in those systems are subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1) and (k)(2).

(b) The systems of records listed under paragraphs b(1) and (b)(2) of this section are exempted, for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1). (c)(3). The release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for these systems of records, would permit the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to determine whether he is the subject of investigation, or to obtain valuable information concerning the nature of that investigation, and the information obtained, or the identity of witnesses and informants and would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record; such notice requirement under subsection (f)(1) is specifically exempted for these systems of records.

(2). (c)(4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this subsection is inapplicable to the extent that these systems of records are exempted from subsection (d).

(3). (d). Access to the records contained in these systems would inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation, or the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement because they could prevent the successful completion of the investigation, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(4). (e)(1). The notices of these systems of records published in the FEDERAL REGISTER set forth the basic statutory or related authority for maintenance of this system. However, in the course of criminal or other law enforcement investigations, cases, and matters, the Criminal Division or its components will occasionally obtain information concerning actual or potential violations of law that are not strictly within its statutory or other authority or may compile information in the course of an investigation which may not be relevant to a specific prosecution. In the interests of effective law enforcement, it is necessary to retain such information in these systems of records since it can aid in establishing patterns of criminal activity and can provide valuable leads for federal and other law enforcement agencies.

(5). (e)(2). In a criminal investigation or prosecution, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation or prosecution would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6). (e)(3). The requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(7). (e)(4) (G) and (H). Since an exemption is being claimed for subsections (f) (Agency Rules) and (d) (Access to Records) of the Act these subsections are inapplicable to the extent that these systems of records are exempted from subsections (f) and (d).

(8). (e)(4)(I). The categories of sources of the records in these systems have been published in the FEDERAL REGISTER in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in these systems, exemption from this provision is necessary in order to protect the confidentiality of the sources of criminal and other law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(9). (e)(5). In the collection of information for criminal law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can often only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators, intelligence analysts, and government attorneys in exercising their judgment in reporting on information and investigations and impede the development of criminal or other intelligence necessary for effective law enforcement.

(10). (e)(8). The individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue warrants or subpoenas and could reveal investigative techniques, procedures, or evidence.

(11). (f). Procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to him dealing with an actual or potential criminal, civil, or regulatory investigation or prosecution must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or prosecution pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules require pursuant to subsection (f) (2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

(12). (g). Since an exemption is being claimed for subsections (d) (Access to Rec-

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ords) and (f) (Agency Rules) this section is inapplicable, and is exempted for the reasons set forth for those subsections, to the extent that these systems of records are exempted from subsections (d) and (f).

(13). In addition, exemption is claimed for these systems of records from compliance with the following provisions of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to the provisions of 5 U.S.C. 552a(k)(1): Subsections (c)(3), (d), (e)(1), (e)(4) (G), (H) and (I) and (f) to the extent that the records contained in these systems are specifically authorized to be kept secret in the interests of national defense and foreign policy.

(c) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j) (2) from subsection (c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4) (G), (H) and (I), (e) (5) and (8), (f) and (g) of 5 U.S.C. 552a: Criminal Division Witness Security File System of Records (JUSTICE/CRM-002).

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(d) The system of records listed under paragraph (c) of this section is exempted, for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1). (c)(3) The release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for these systems of records, would permit the subject of an investigation of an actual or potential criminal violation, which may include those protected under the Witness Security Program, to determine whether he is the subject of a criminal investigation, to obtain valuable information concerning the nature of that investigation and the information obtained, or the identity of witnesses and informants and the nature of their reports, and would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record; such notice requirement under subsection (f)(1) is specifically exempted for these systems of records. Moreover, disclosure of the disclosure accounting to an individual protected under the Witness Security Program could jeopardize the effectiveness and security of the Program by revealing the methods and techniques utilized in relocating witnesses and could therefore jeopardize the ability to obtain, and to protect the confidentiality of, information compiled for purposes of a criminal investigation.

(2). (c)(4) Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this section is inapplicable.

(3). (d) Access to the records contained in these systems would inform the subject of an investigation of an actual or potential criminal violation, which may include those protected under the Witness Security Program, of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement because they could prevent the successful completion of the investigation, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, access to the records in these systems to an individual protected under the Witness Security Program could jeopardize the effectiveness and security of the Program by revealing the methods and techniques utilized in relocating witnesses and could therefore jeopardize the ability to obtain, and to protect the confidentiality of, information compiled for purposes of a criminal investigation.

(4). Exemption is claimed from subsection (e)(1) for the reasons stated in subsection (b)(4) of this section.

(5). (e)(2) In the course of preparing a Witness Security Program for an individual, much of the information is collected from the subject. However, the requirement that the information be collected to the greatest extent practicable from the subject individual would present a serious impediment to criminal law enforcement because the individual himself may be the subject of a criminal investigation or have been a participant in, or observer of, criminal activity. As a result, it is necessary to seek information from other sources. In addition, the failure to verify the information provided from the individual when necessary and to seek other information could jeopardize the confidentiality of the Witness Security Program and lead to the obtaining and maintenance of incorrect and uninvestigated information on criminal matters.

(6). (e)(3) The requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise or reveal the identity of witnesses and informants protected under the Witness Security Program.

(7). (e)(4) (G) and (H). Since an exemption is being claimed for subsections (f) (Agency

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Rules) and (d) (Access to Records) of the Act these subsections are inapplicable.

(8). (e)(4)(I). The categories of sources of the records in these systems have been published in the FEDERAL REGISTER in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in the system, exemption from this provision is necessary in order to protect the confidentiality of the sources of criminal law, enforcement information and of witnesses and informants protected under the Witness Security Program.

(9). Exemption is claimed from subsections (e)(5) and (e)(8) for the reasons stated in subsection (b)(9) and (b)(10) of this section.

(10). Procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records contained in these systems pertaining to him would inform the subject of an investigation of an actual or potential criminal violation, which may include those protected under the Witness Security Program, of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement because they could prevent the successful conduct and/or completion of an investigation pending or future, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, notices as to the existence of records contained in these systems to an individual protected under the Witness Security Program could jeopardize the effectiveness and security of the Program by revealing the methods and techniques utilized in relocating witnesses and could therefore jeopardize the ability to obtain, and to protect the confidentiality of, information compiled for purposes of a criminal investigation.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsection (f) (2) through (5) are inapplicable.

(11). (g) Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable and is exempted for the reasons set forth for those subsections.

(e) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e) (4) (G), (H) and (I), (f), and (g) of 5 U.S.C. 552a: Organized Crime and Racketeering Section, Intelligence and Special Services Unit, Information Request System of Records (JUSTICE/CRM-014). These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(f) The system of records listed under paragraph (e) of this section is exempted for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1). (c)(3). The release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for these systems of records, would permit the subject of an investigation of an actual or potential criminal violation to determine whether he is the subject of a criminal investigation and would therefore present a serious impediment to law enforcement. The records in these systems contain the names of the subjects of the files in question and the system is accessible by name of the person checking out the file and by name of the subject of the file. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record; such notice requirement under subsection (f)(1) is specifically exempted for these systems of records.

(2). (c)(4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this section is inapplicable.

(3). (d). Access to the records contained in these systems would inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation. This would present a serious impediment to effective law enforcement because it could prevent the successful completion of the investigation, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(4). Exemption is claimed from subsections (e)(4) (G), (H) and (I) for the reasons stated in subsections (b)(7) and (b)(8) of this section.

(5). (f). These systems may be accessed by the name of the person who is the subject of the file and who may also be the subject of a criminal investigation. Procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to him, which may deal with an actual or potential criminal investigation or prosecution, must be exempted because such notice to an individual would be detrimental to the successful conduct and/or

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completion of the investigation or prosecution pending or future. In addition mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsection (f) (2) through (5) are inapplicable.

(6). (g). Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) of the Act this section is inapplicable and is exempted for the reasons set forth for those subsections.

(g) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(4), (d), (e)(4) (G), (H) and (I), (f) and (g) of 5 U.S.C. 552a.

File of Names Checked to Determine If Those Individuals Have Been the Subject of an Electronic Surveillance System of Records (JUSTICE/CRM-003).

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(h) The system of records listed under paragraph (g) of this section is exempted, for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1). (c)(4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this section is inapplicable to the extent that this system of records is exempted from subsection (d)

(2). (d). The records contained in this system of records generally consist of information filed with the court in response to the request and made available to the requestor. To the extent that these records have been so filed, no exemption is sought from the provisions of this subsection. Occasionally, the records contain pertinent logs of intercepted communications and other investigative reports not filed with the court. These records must be exempted because access to such records could inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation and of the nature of the information and evidence obtained by the government. This would present a serious impediment to effective law enforcement because it could prevent the successful completion of the investigation, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(3). Exemption is claimed from subsections (e)(4) (G), (H) and (I) for the reasons stated in subsections (b)(7) and (b)(8) of this section.

(4). (f). The records contained in this system of records generally consist of information filed with the court and made available to the requestor. To the extent that these records have been so filed, no exemption is sought from the provisions of this subsection. Occasionally, the records contain pertinent logs of intercepted communications and other investigative reports not filed with the court. These records must be exempted from a requirement of notification as to their existence because such notice to an individual would be detrimental to the successful conduct and/or completion of a criminal investigation or prosecution pending or future. In addition, mere notice of the existence of such logs or investigative reports could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsection (f) (2) through (5) are inapplicable to the extent that this system of records is exempted for subsection (d).

(6). (g). Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable, and is exempted for the reasons set forth for those subsections, to the extent that this system of records is exempted from subsections (d) and (f).

(i) The following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e) (1), (2), and (3), (e)(4) (G), (H), and (I), (e) (5) and (8), (f) and (g) of 5 U.S.C. 552a:

(1) Information File on Individuals and Commercial Entities Known or Suspected of Being Involved in Fraudulent Activities System of Records (JUSTICE/CRM-006).

(2) The Stocks and Bonds Intelligence Control Card File System of Records (JUSTICE/CRM-021).

(3) Tax Disclosure Index File and Associated Records (JUSTICE/CRM-025).

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These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(j) The systems of records listed in paragraphs (i)(1), (i)(2), and (i)(3) of this section are exempted, for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1)(c)(3) The release of the disclosure accounting for disclosures made pursuant to subsection (b) of the act, including those permitted under the routine uses published for these systems of records, would permit the subject of an investigation of an actual or potential criminal violation to determine whether he is the subject of a criminal investigation, to obtain valuable information concerning the nature of that investigation, and the information obtained, or the identity of witnesses and informants, and would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record; such notice requirement under subsection (f)(1) is specifically exempted for this system of records.

(2)(c)(4) Since an exemption is being claimed for subsection (d) of the act (access to records), this section is inapplicable to the extent that these systems of records are exempted from subsection (d).

(3)(d) Access to the records contained in these systems would inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement because they could prevent the successful completion of the investigation, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(4) Exemption is claimed from subsections (e) (1), (2), and (3), (e)(4) (G), (H), and (I), (e)(5) and (e)(8) for the reasons stated in subsections (b)(4), (b)(5), (b)(6), (b)(7), (b)(8), (b)(9), and (b)(10) of this section.

(5)(f) Procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to him dealing with an actual or potential criminal investigation or prosecution must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or prosecution pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since an exemption is being claimed for subsection (d) of the act (access to records), the rules required pursuant to subsection (f) (2) through (5) are inapplicable to these systems of records.

(6)(g) Since an exemption is being claimed for subsections (d) (access to records) and (f) (Agency rules), this section is inapplicable and is exempted for the reasons set forth for those subsections.

(k) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G), (H) and (I), (e) (5) and (8), (f) and (g) of 5 U.S.C. 552a; in addition, the following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(k)(1) from subsections (c) (3), (d), (e)(1), (e)(4) (G), (H) and (I) and (f) of 5 U.S.C. 552a:

Organized Crime and Racketeering Section, Criminal Division, General Index File and Associated Records System of Records (JUSTICE/CRM-012).

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(1).

(l) The system of records listed under paragraph (m)[1] of this section is exempted, for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1). Exemption is claimed from subsections (c) (3) and (4) and (d) for the reasons stated in subsections (j)(1), (j)(2) and (j)(3) of this section.

(2). (e)(1). The notice for this system of records published in the Federal Register sets forth the basic statutory or related authority for maintenance of this system. However, in the course of criminal investigations, cases, and matters, the Organized Crime and Racketeering Section will occasionally obtain information concerning actual or potential violations of law that are not strictly within its statutory or other authority, or may compile information in the

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[1] Paragraph (m) was redesignated as paragraph (k) at 44 FR 54046, Sept. 18, 1979.

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course of an investigation which may not be relevant to a specific prosecution. In the interests of effective law enforcement, it is necessary to retain such information in this system of records since it can aid in establishing patterns of criminal activity and can provide valuable leads for federal and other law enforcement agencies.

(3). Exemption is claimed from subsections (e) (2) and (3), (e)(4) (G), (H) and (I), (e) (5) and (8), (f) and (g) for the reasons stated in subsections (b)(5), (b)(6), (b)(7), (b)(8), (b)(9), (b)(10), (b)(11) and (b)(12) of this section.

(4). In addition, exemption is claimed for this system of records from compliance with the following provisions of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to the provisions of 5 U.S.C. 552a(k)(1): Subsections (c)(3), (d), (e)(1), (e)(4) (G), (H) and (I) and (f) to the extent that the records contained in this system are specifically authorized to be kept secret in the interests of national defense and foreign policy.

(m) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e) (2) and (3), (e) (4) (G), (H) and (I), (e) (8), (f) and (g) of 5 U.S.C. 552a: Requests to the Attorney General For Approval of Applications to Federal Judges For Electronic Interceptions System of Records (JUSTICE/CRM-019). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(n) The system of records listed in paragraph (m) of this section is exempted for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1). (c)(3). The release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for these systems of records, would permit the subject of an electronic interception to obtain valuable information concerning the interception, including information as to whether he is the subject of a criminal investigation, by means other than those provided for by statute. Such information could interfere with the successful conduct and/or completion of a criminal investigation, and would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record; such notice requirement under subsection (f)(1) is specifically exempted for these systems of records.

(2). (c)(4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this section is inapplicable.

(3). (d). Access to the records contained in these systems would inform the subject of an electronic interception of the existence of such surveillance including information as to whether he is the subject of a criminal investigation by means other than those provided for by statute. This could interfere with the successful conduct and/or completion of a criminal investigation and therefore present a serious impediment to law enforcement.

(4). (e)(2). In the context of an electronic interception, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation or prosecution would be placed on notice as to the existence of the investigation and this would therefore destroy the efficacy of the interception.

(5). (e)(3). The requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential electronic interception or reveal the identity of witnesses or confidential informants.

(6). (e)(4) (G) and (H). Since an exemption is being claimed for subsections (f) (Agency Rules) and (d) (Access to Records) of the Act these subsections are inapplicable.

(7). Exemption is claimed from subsections (e)(4)(I) and (e)(8) for the reasons stated in subsections (b)(8) and (b)(10) of this section.

(8). (f). Procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to him dealing with an electronic interception other than pursuant to statute must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation pending or future. In addition, mere notice of the fact of an electronic interception could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsection (f)(2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

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(9). (g). Since an exemption is being claimed for subsection (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable, and is exempted for the reasons set forth for those subsections, to the extent that these systems of records are exempted from subsection (d) and (f).

(o) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e) (2) and (3), (e) (4) (G), (H), and (I), (e)(8), (f) and (g) of 5 U.S.C. 552a; in addition the following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(k)(1) and (k)(2) from subsections (c)(3), (d), (e)(4) (G), (H) and (I), and (f) of 5 U.S.C. 552a:

Witness Immunity Records System of Records (JUSTICE/CRM-022).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(1) and (k)(2).

(p) The system of records listed under paragraph (q)[2] of this section is exempted, for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1). (c)(3). Release of the accounting of disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for this system of records, (a) as to a witness for whom immunity has been proposed, would inform the individual of the existence of the proposed immunity prematurely, thus creating a serious impediment to effective law enforcement in that the witness could flee, destroy evidence, or fabricate testimony; and (b) as to a witness to whom immunity has been granted, or for whom it has been denied, would reveal the nature and scope of the activities, if any, of the witness known to the government, which would also create a serious impediment to effective law enforcement.

(2). (c)(4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this section is inapplicable to the extent that this system of records is exempted from subsection (d).

(3). (d). Access to the records contained in this system (a) as to a witness for whom immunity has been proposed, would inform the individual of the existence of the proposed immunity prematurely, thus presenting a serious impediment to effective law enforcement in that the witness could flee, destroy evidence, or fabricate testimony; and (b) as to a witness to whom immunity has been granted, or for whom it has been denied, would reveal the nature and scope of the activities, if any, of the witness known to the government, which would also create a serious impediment to effective law enforcement.

(4). (e)(2). In a witness immunity request matter, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the immunity request and often the subject of the underlying investigation or prosecution would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(5). Exemption is claimed from subsections (e)(3), (e)(4)(G), (H) and (I), and (e)(8) for the reasons stated in subsections (b)(6), (b)(7), (b)(8) and (b)(10) of this section.

(6). (f). Procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to him (a) as to a witness for whom immunity has been proposed, would inform the individual of the existence of the proposed immunity prematurely, thus presenting a serious impediment to effective law enforcement in that the witness could flee, destroy evidence, or fabricate testimony; and (b) as to a witness to whom immunity has been granted, or for whom it has been denied, would reveal the nature and scope of the activity, if any, of the witness known to the government, which would also create a serious impediment to effective law enforcement.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsection (f)(2) through (5) are inapplicable to this system of records to the extent that this system of records is exempted from subsection (d).

(7). (g). Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable, and is exempted for the reasons set forth for those subsections, to the extent that this system of records is exempted for subsections (d) and (f).

(8). In addition, exemption is claimed for this system of records from compliance with the following provisions of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to the provisions of 5 U.S.C. 552a(k)(1): subsections (c)(3), (d), (e)(1), (e)(4) (G), (H) and (I) and (f) to the extent that the records contained in this system are specifically authorized to

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[2] Paragraph (q) was redesignated as paragraph (o) at 44 FR 54046, Sept. 18, 1979.

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be kept secret in the interests of national defense and foreign policy.

(q) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e) (1 , (2) and (3), (e)(4) (G), (H) and (I), (e) (5) and (8), (f), and (g) of 5 U.S.C. 552a; in addition, the following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a (k)(1) and (k)(2) from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H) and (I), and (f) of 5 U.S.C. 552a:

(1) Freedom of Information/Privacy Act Records (JUSTICE/CRM-024).

(2) These exemptions apply only to the extent that the records contained in this system have been obtained from other systems of records maintained by the Criminal Division for which exemptions from one or more of the foregoing provisions of the Privacy Act of 1974 have been promulgated. The exemption claimed for this system of records applies only to records obtained from such other Criminal Division systems and only to the same extent as the records contained in such other systems have been exempted.

(r) The system of records listed under paragraph (s)[3] of this section is exempted for the following reasons:

(1) In the course of processing requests for records pursuant to the Freedom of Information Act (5 U.S.C. 552) or for access or correction of records pursuant to the Privacy Act (5 U.S.C. 552a), it is frequently necessary to search for records in systems of records for which exemptions have been claimed pursuant to 5 U.S.C. 552a (j) or (k). When records are located in said systems, it is frequently necessary to prepare copies for the purpose of consulting with agency personnel or with other agencies, either with regard to determining whether or to what extent the records should be disclosed, or access provided, or correction made or denied, or for review in the event of administrative appeal or judicial review.

(2) If records otherwise exempt pursuant to published rules should lose their exempt character when taken from such exempt systems for the purpose of compliance with the Freedom of Information Act and the Privacy Act in reviewing such records and making determination with regard to disclosure, access, and correction, the purpose of the Privacy Act in providing such exemptions, and of the Department of Justice in claiming such exemptions would be defeated and nullified. The proper, efficient, and timely processing of citizens' requests pursuant to said Acts would be hindered and impeded.

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 659-76, 41 FR 32423, Aug. 3, 1976; AAG/A Order No. 11-78, 43 FR 38386, Aug. 28, 1978; Order No. 30-79, 44 FR 54046, Sept. 18, 1979]

§ 16.92 Exemption of Land and Natural Resources Division System—Limited access, as indicated.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (d):

(1) Docket Card System (JUSTICE/LDN-003).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because that portion of the Docket Card System relating to enforcement of criminal provisions of the Refuse Act of 1899 (33 U.S.C. 407), Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403), Section 5 of the Outer Continental Shelf Act (43 U.S.C. 1151 et seq.), the Clean Air Act (42 U.S.C. 1857 et seq.) and the Noise Control Act of 1972 (42 U.S.C. 4901), is being exempted from access and contest; the provisions for disclosure of accounting is not applicable.

(2) From subsection (d) because of the need to safeguard the identity of confidential informants and to facilitate the enforcement of the criminal provisions of the above statutes.

(c) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (d):

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[3] Paragraph (s) was redesignated as paragraph (q) at 44 FR 54046, Sept. 18, 1979.

(1) Freedom of Information/Privacy Act Records System. (Justice/LDN-005).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c) (3) because that portion of the Freedom of Information/Privacy Act Records System that consists of investigatory materials compiled for law enforcement purposes is being exempted from access and contest; the provision for disclosure of accounting is not applicable.

(2) From subsection (d) because of the need to safeguard the identity of confidential informants and avoid interference with ongoing investigations or law enforcement activities by preventing premature disclosure of information relating to those efforts.

[Order No. 688-77, 42 FR 10000, Feb. 18, 1977]

§ 16.93 Exemption of Tax Division Systems—Limited access.

(a) The following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f) and (g) of 5 U.S.C. 552a:

(1) Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Criminal Tax Cases (JUSTICE/TAX-001)—Limited Access.

(2) Tax Division Special Projects Files (JUSTICE/TAX-005)—Limited Access.

These exemptions apply to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) The systems of records listed under paragraphs (a)(1) and (a)(2) of this section are exempted for the reasons set forth below, from the following provisions of 5 U.S.C. 552a:

(1)(c)(3). The release of the disclosure accounting, for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for those systems of records, would enable the subject of an investigation of an actual or potential criminal tax case to determine whether he or she is the subject of investigation, to obtain valuable information concerning the nature of that investigation and the information obtained, and to determine the identity of witnesses or informants. Such access to investigative information would, accordingly, present a serious impediment to law enforcement. In addition, disclosure of the accounting would constitute notice to the individual of the existence of a record even though such notice requirement under subsection (f)(1) is specifically exempted for these systems of records.

(2)(c)(4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this subsection is inapplicable to the extent that these systems of records are exempted from subsection (d).

(3) (d)(1); (d)(2); (d)(3); (d)(4). Access to the records contained in these systems would inform the subject of an actual or potential criminal tax investigation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his or her activities, and of the identity of witnesses or informants. Such access would, accordingly, provide information that could enable the subject to avoid detection, apprehension and prosecution. This result, therefore, would constitute a serious impediment to effective law enforcement not only because it would prevent the successful completion of the investigation but also because it could endanger the physical safety of witnesses or informants, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(4)(e)(1). The notices for these systems of records published in the FEDERAL REGISTER, set forth the basic statutory or related authority for maintenance of these systems. However, in the course of criminal tax and related law enforcement investigations, cases, and matters, the Tax Division will occasionally obtain information concerning actual or potential violations of law that may not be technically within its statutory or other authority or may compile information in the course of an investigation which may not be relevant to a specific prosecution. In the interests of effective law enforcement, it is necessary to retain some or all of such information in these systems of records since it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

(5)(e)(2). In a criminal tax investigation or prosecution, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law en-

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forcement because the subject of the investigation or prosecution would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, influence witnesses improperly, destroy evidence, or fabricate testimony.

(6)(e)(3). The requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(7)(e)(4) (G) and (H). Since an exemption is being claimed for subsections (f) (Agency Rules) and (d) (Access to Records) of the Act these subsections are inapplicable to the extent that these systems of records are exempted from subsection (f) and (d).

(8)(e)(4)(I). The categories of sources of the records in the sytems have been published in the FEDERAL REGISTER in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in these systems, exemption from this provision is necessary in order to protect the confidentiality of the sources of criminal tax and related law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(9)(e)(5). In the collection of information for criminal tax enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. Furthermore, the accuracy of such information can often only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of government attorneys in exercising their judgment in reporting on information and investigations and impede the development of criminal tax information and related data necessary for effective law enforcement.

(10)(e)(8). The individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue warrants or subpoenas and could reveal investigative techniques, procedures, or evidence.

(11)(f). Procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to him dealing with an actual or potential criminal tax, civil tax, or regulatory investigation or prosecution must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion or an investigation or prosecution pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsection (f) (2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

(12)(g). Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable, and is exempted for the reasons set forth for those subsections, to the extent that these systems of records are exempted from subsections (d) and (f).

(c) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G, (e)(4)(H, (e)(4)(I) and (f) of 5 U.S.C. 552a:

(1) Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Civil Tax Cases (JUSTICE/TAX-002)—Limited Access.

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(d) The system of records listed under paragraph (c)(1) is exempted for the reasons set forth below, from the following provisions of 5 U.S.C. 552a:

(1)(c)(3). The release of the disclosure accounting, for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for this system of records, would enable the subject of an investigation of an actual or potential civil tax case to determine whether he or she is the subject of investigation, to obtain valuable information concerning the nature of that investigation and the information obtained, and to determine the identity of witnesses or informants. Such access to investigative information would, accordingly, present a serious impediment to law enforcement. In addition, disclosure of the accounting would constitute notice to the individual of the existence of a record even though such notice requirement under

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subsection (f)(1) is specifically exempted for this system of records.

(2) (d)(1); (d)(2); (d)(3); (d)(4). Access to the records contained in this system would inform the subject of an actual or potential civil tax investigation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his or her activities and of the identity of witnesses or informants. Such access would, accordingly, provide information that could enable the subject to avoid detection. This result, therefore, would constitute a serious impediment to effective law enforcement not only because it would prevent the successful completion of the investigation but also because it could endanger the physical safety of witnesses or informants, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(3)(e)(1). The notices for this system of records published in the FEDERAL REGISTER set forth the basic statutory or related authority for maintenance of this system. However, in the course of civil tax and related law enforcement investigations, cases and matters, the Tax Division will occasionally obtain information concerning actual or potential violations of law that are not strictly or technically within its statutory or other authority or may compile information in the course of an investigation which may not be relevant to a specific case. In the interests of effective law enforcement, it is necessary to retain some or all of such information in this system of records since it can aid in establishing patterns of tax compliance and can provide valuable leads for Federal and other law enforcement agencies.

(4)(e)(4) (G) and (H). Since an exemption is being claimed for subsections (f) (Agency Rules) and (d) (Access to Records) of the Act these subsections are inapplicable to the extent that this system of records is exempted from subsection (f) and (d).

(5)(e)(4)(I). The categories of sources of the records in this system have been published in the FEDERAL REGISTER in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in this system, exemption from this provision is necessary in order to protect the confidentiality of the sources of civil tax and related law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(6)(f). Procedures for notice to an individual pursuant to subsection (f)(1) as to existence of records pertaining to the individual dealing with an actual or potential criminal tax, civil tax, or regulatory investigation or prosecution must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or case, pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsection (f) (2) through (5) are inapplicable to this system of records to the extent that this system of records is exempted from subsection (d).

(e) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f) and (g) of 5 U.S.C. 552a; in addition, the following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of 5 U.S.C. 552a:

(1) Tax Division Freedom of Information—Privacy Act Request Files (JUSTICE/TAX-004).

(2) These exemptions apply only to the extent that the records contained in this system have been obtained from other systems of records maintained by the Tax Division for which exemptions from one or more of the foregoing provisions of the Privacy Act of 1974 have been promulgated. The exemption claimed for this system of records applies only to records obtained from such other Tax Division systems and only to the same extent as the records contained in such other systems have been exempted.

(f) The system of records listed under paragraph (e)(1) of this section is exempted for the following reasons:

(1) In the course of processing requests for records pursuant to the Freedom of Information Act (5 U.S.C. 552) or for access or correction of records pursuant to the Privacy Act (5 U.S.C. 552a), it is frequently necessary to search for records in systems of rec-

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ords for which exemptions have been claimed pursuant to 5 U.S.C. 552a (j) or (k). When records are located in said systems, it is frequently necessary to prepare copies for the purpose of consulting with agency personnel or with other agencies, either with regard to determining whether or to what extent the records should be disclosed, or access provided, or correction made or denied, or with regard to review in the event of administrative appeal or judicial review.

(2) If records otherwise exempt pursuant to published rules should lose their exempt character when taken from such exempt systems for the purpose of compliance with the Freedom of Information Act and the Privacy Act in reviewing such records and making determination with regard to disclosure, access, and correction, the purpose of the Privacy Act in providing such exemptions, and of the Department of Justice in claiming such exemptions would be defeated and nullified. The proper, efficient, and timely processing of citizens' requests pursuant to said Acts would be hindered and impeded.

[Order No. 742-77, 42 FR 40906, Aug. 12, 1977]

§ 16.96 Exemption of Federal Bureau of Investigation Systems—Limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(8), (f) and (g).

(1) *Central Records System (CRS) (JUSTICE/FBI-002).* These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552(j) and (k). Where compliance would not appear to interfere with or adversely affect the overall law enforcement process, the applicable exemption may be waived by the FBI.

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest by not only the FBI, but also by the recipient agency. This would permit the record subject to take appropriate measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses or flee the area to avoid the thrust of the investigation.

(2)(i) From subsections (d), (e)(4)(G) and (H), (f) and (g) because these provisions concern individual access to investigative records, compliance with which could compromise sensitive information classified in the interest of national security, interfere with the overall law enforcement process by revealing a pending sensitive investigation, possibly identify a confidential source or disclose information which would constitute an unwarranted invasion of another individual's personal privacy, reveal a sensitive investigative technique, or constitute a potential danger to the health or safety to law enforcement personnel.

(ii) Also, individual access to non-criminal investigative records, e.g., civil investigations and administrative inquiries, as described in subsection (k) of the Privacy Act, could also compromise classified information related to national security, interfere with a pending investigation or internal inquiry, constitute an unwarranted invasion of privacy, reveal a confidential source or sensitive investigative technique, or pose a potential threat to law enforcement personnel. In addition, disclosure of information collected pursuant to an employment suitability or similar inquiry could reveal the identity of a source who provided information under an express promise of confidentiality, or could compromise the objectivity or fairness of a testing or examination process.

(iii) In addition, from paragraph (d)(2) of this section, because to require the FBI to amend information thought to be incorrect, irrelevant or untimely, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations attempting to resolve questions of accuracy, etc.

(3) From subsection (e)(1) because:

(i) It is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(ii) Relevance and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(iii) In any investigation the FBI might obtain information concerning violations of law not under its jurisdiction, but in the interest of effective law enforcement, dissemination will be made to the agency charged with enforcing such law.

(iv) In interviewing individuals or obtaining other forms of evidence during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigation or to an investigative activity under the jurisdiction of another agency.

(4) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his own activities.

(5) From subsection (e)(3) because disclosure would provide the subject with substantial information which could impede or compromise the investigation. The individual could seriously interfere with undercover investigative activities and could take appropriate steps to evade the investigation or flee a specific area.

(6) From subsection (e)(8) because the notice requirements of this provision could seriously interfere with a law enforcement activity by alerting the subject of a criminal or other investigation of existing investigative interest.

(c) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f), (g) and (m):

(1) Electronic Surveillance (Elsur) Indices (JUSTICE/FBI-006).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of accounting disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, resulting in a serious impediment to law enforcement.

(2) From subsections (c)(4), (d), (e)(4) (G) and (H), and (g) because these provisions concern an individual's access to records which concern him and such access to records in this system would compromise ongoing investigations, reveal investigatory techniques and confidential informants, and invade the privacy of private citizens who provide information in connection with a particular investigation.

(3) From subsection (e)(1) because these indices must be maintained in order to provide the information as described in the "routine uses" of this particular system.

(4) From subsections (e) (2) and (3) because compliance is not feasible given the subject matter of the indices.

(5) From subsection (e)(5) because this provision is not applicable to the indices in view of the "routine uses" of the indices. For example, it is impossible to predict when it will be necessary to utilize information in the system and, accordingly it is not possible to determine when the records are timely.

(6) From subsection (e)(8) because the notice requirement could present a serious impediment to law enforcement by revealing investigative techniques, procedures and the existence of confidential investigations.

(7) From subsection (m) for the reasons stated in subsection (b)(7) of this section.

(e) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f), and (g):

(1) Identification Division Records System (JUSTICE/FBI-009).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j).

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) for the reasons stated in subsection (d)(1) of this section.

(2) From subsections (c)(4), (d), (e)(4) (G) and (H), (f) and (g) because these provisions concern an individual's access to records which concern him. Such access is directed at allowing the subject of a record to correct inaccuracies in it. Although an alternate system of access has been provided in 28 CFR 16.30 to 34 and 28 CFR 20.34, the vast majority of records in this system concern local arrests which it would be inappropriate for the FBI to undertake to correct.

(3) From subsection (e)(1) because it is impossible to state with any degree of certainty that all information on these records is relevant to accomplish a purpose of the FBI, even though acquisition of the records from state and local law enforcement agencies is based on a statutory requirement. In view of the number of records in the system it is impossible to review them for relevancy.

(4) From subsection (e)(2) because the records in the system are necessarily furnished by criminal justice agencies due to their very nature.

(5) From subsection (e)(3) because compliance is not feasible due to the nature of the records.

(6) From subsection (e)(5) because the vast majority of these records come from local criminal justice agencies and it is administratively impossible to ensure that the records comply with this provision. Submitting agencies are, however, urged on a continuing basis to ensure that their records are accurate and include all dispositions.

(7) From subsection (e)(8) because the FBI has no logical manner to ascertain whether process has been made public and compliance with this provision would in any case, provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

(g) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(8), (f) and (g): National Crime Information Center (NCIC) (JUSTICE/FBI-001). This exemption applies only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j).

(h) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) for the reasons stated in subsection (d)(1) of this section.

(2) From subsections (c)(4), (d), (e)(4) (G) and (H), and (g) for the reasons stated in subsection (d)(2) of this section. When records are properly subject to access by the individual, an alternate means of access is provided in subsection (i) of this section.

(3) From subsection (e)(1) because information contained in this system is primarily from state and local records, and it is for the official use of agencies outside the Federal Government in accordance with 28 U.S.C. 534.

(4) From subsections (e) (2) and (3) because it is not feasible to comply with these provisions given the nature of this system.

(5) From subsection (e)(8) for the reasons stated in subsection (d)(6) of this section.

(i) Access to computerized criminal history records in the National Crime Information Center is available to the individual who is the subject of the record pursuant to procedures and requirements specified in the Notice of Systems of Records compiled by the National Archives and Records Service and published under the designation:

National Crime Information Center (NOIC) (JUSTICE/FBI-001)).

Information on access is also published in the Appendix to Part 20 of the Code of Federal Regulations in relation to 28 CFR 20.34.

[Order No. 40-80, 45 FR 5301, Jan. 23, 1980, as amended by AAG/A Order No. 64-81, 46 FR 20540, Apr. 6, 1981; AAG/A Order No.

63-81, 46 FR 22362, Apr. 17, 1981; AAG/A Order No. 67-81, 46 FR 30495, June 9, 1981]

§ 16.97 Exemption of Bureau of Prisons Systems—Limited access.

(a) The following systems of records are exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (2) and (3), (e)(4) (H), (e)(8), (f) and (g):

(1) Custodial and Security Record System (JUSTICE/BOP-001).

(2) Industrial Inmate Employment Record System (JUSTICE/BOP-003).

(3) Inmate Administrative Remedy Record System (JUSTICE/BOP-004).

(4) Inmate Central Record System (JUSTICE/BOP-005).

(5) Inmate Commissary Accounts Record System (JUSTICE/BOP-006).

(6) Inmate Physical and Mental Health Record System (JUSTICE/BOP-007).

(7) Inmate Safety and Accident Compensation Record System (JUSTICE/BOP-008).

(8) Federal Tax Claims Act Record System (JUSTICE/BOP-009).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because inmates will not be permitted to gain access or to contest contents of these record systems under the provisions of subsection (d) of 5 U.S.C. 552a. Revealing disclosure accountings can compromise legitimate law enforcement activities and Bureau of Prisons responsibilities.

(2) From subsection (c)(4) because exemption from provisions of subsection (d) will make notification of formal disputes inapplicable.

(3) From subsection (d) because exemption from this subsection is essential to protect internal processes by which Bureau personnel are able to formulate decisions and policies with regard to federal prisoners, to prevent disclosure of information to federal inmates that would jeopardize legitimate correctional interests of security, custody, or rehabilitation, and to permit receipt of relevant information from other federal agencies, state and local law enforcement agencies, and federal and state probation and judicial offices.

(4) From subsection (e)(2) because primary collection of information directly from federal inmates about criminal sentences or criminal records is highly impractical and inappropriate.

(5) From subsection (e)(3) because in view of the Bureau of Prisons' responsibilities, application of this provision to its operations and collection of information is inappropriate.

(6) From subsection (e)(4)(H) because exemption from provisions of subsection (d) will make publication of agency procedures under this subsection inapplicable.

(7) From subsection (e)(8) because the nature of Bureau of Prisons law enforcement activities renders notice of compliance with compulsory legal process impractical.

(8) From subsection (f) because exemption from provisions of subsection (d) will render compliance with provisions of this subsection inapplicable.

(9) From subsection (g) because exemption from provisions of subsection (d) will render provisions of this subsection inapplicable.

(c) Consistent with the legislative purpose of the Privacy Act of 1974 (Pub. L. 93-579) the Bureau of Prisons will initiate a procedure whereby federal inmates in custody may gain access and review their individual prison files maintained at the institution of incarceration. Access to these files will be limited only to the extent that the disclosure of records to the inmate would jeopardize internal decision-making or policy determinations essential to the effective operation of the Bureau of Prisons; to the extent that disclosure of the records to the inmate would jeopardize privacy rights of others, or a legitimate correctional interest of security, custody, or rehabilitation; and to the extent information is furnished with a legitimate expectation of confidentiality. The Bureau of Prisons will continue to provide access to former inmates under existing regulations as is consistent with the interests listed above. Under present Bureau of Prisons regulations, inmates in federal institutions may file administrative complaints on any subject under the control of the Bureau. "This would include complaints pertaining to information contained in these systems of records."

§ 16.98 Exemption of Drug Enforcement Administration Systems.

(a) The following systems of records are exempt from 5 U.S.C. 552a (c)(3), (d), (e)(4) (G) and (H), and (f):

(1) Automated Records and Consumated Orders System/Diversion Analysis and Detection System (ARCOS/DADS) (JUSTICE/DEA-004).

(2) Controlled Substances Act Registration Records (JUSTICE/DEA-006).

(3) Registration Status/Investigatory Records (JUSTICE/DEA-016).

(4) Drug Theft Reporting System (JUSTICE/DEA-023).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the revealing of the disclosure accounting pursuant to the routine uses published for these systems would enable the subject of an investigation to gain valuable information concerning the nature and scope of the investigation and seriously hamper the regulatory functions of the Drug Enforcement Administration.

(2) From subsection (d) because access to records contained in these systems might provide the subject of an investigation information that could enable him to avoid compliance with the Drug Abuse Prevention and Control Act of 1970 (Pub. L. 91-513).

(3) From subsections (e)(4) (G) and (H) because these systems or records are exempt from individual access pursuant to subsection (k) of the Act.

(4) From subsection (f) because these systems are exempt from the access provisions of subsection (d).

(c) The following systems of records are exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e)(1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f), (g) and (h):

(1) Addict/Abusers System (JUSTICE/DEA-001).

(2) Air Intelligence Program (JUSTICE/DEA-002).

(3) Automated Intelligence Records (Pathfinder I) (JUSTICE/DEA-003).

(4) DEA/FAA Trans-border Flight Plan Reporting System (JUSTICE/DEA-007).

(5) Defendant Data System (JUSTICE/DEA-008).

(6) Domestic Intelligence Data Base (JUSTICE/DEA-009).

(7) International Intelligence Data Base (JUSTICE/DEA-011).

(8) Investigative Reporting and Filing System (JUSTICE/DEA-012).

(9) Office of Internal Security Records (JUSTICE/DEA-014).

(10) Operations Files (JUSTICE/DEA-015).

(11) Security Files (JUSTICE/DEA-017).

(12) Source Registry Narcotics (SRN/1) (JUSTICE/DEA-018).

(13) System to Retrieve Information from Drug Evidence (STRIDE) (JUSTICE/DEA-019).

(14) Drug Enforcement Administration Semi-Automated Narcotic Trafficker Profiles (KISS) (JUSTICE/DEA-025).

(15) Drug Enforcement Administration Specialized Automated Intelligence Files (JUSTICE/DEA-026).

(16) Regional Automated Intelligence Data System (RAIDS) (JUSTICE/DEA-028).

These exemptions apply only to the extent that information in these systems is subject to exemptions pursuant to 5 U.S.C. 552a (j) and (k).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From (c)(3) because the release of the disclosure accounting for disclosure pursuant to the routine uses published for these systems would permit the subject of a criminal investigation to obtain valuable information concerning the nature of that investigation and present a serious impediment to law enforcement.

(2) From subsection (c)(4) because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(3) From subsection (d) because access to records contained in these

systems would alert a subject to the existence of an investigation and thereby provide information to the subject which might enable him to avoid detection or apprehension, and present serious impediment to law enforcement.

(4) From subsection (e)(1) because in the course of criminal investigations, the Drug Enforcement Administration often detects violation of non-drug related laws. In the interests of effective law enforcement, it is necessary that DEA retain all information obtained in criminal investigations because it can aid in establishing patterns of criminal activity and assist other law enforcement agencies that are charged with enforcing other segments of criminal law.

(5) From subsection (e)(2) because information collected to the greatest extent possible from the subject individual of a criminal investigation would provide the subject with valuable information which might preclude detection or apprehension of the subject individual.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life or physical safety of confidential informants.

(7) From subsections (e)(4) (G) and (H) because these systems of records are exempt from individual access pursuant to subsection (j) of the Privacy Act of 1974.

(8) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

(9) From subsection (e)(8) because the individual notice requirements could present a serious impediment to law enforcement by interfering with the Drug Enforcement Administration's ability to issue administrative techniques and procedures.

(10) From subsection (f) because these systems have been exempted from the access provisions of subsection (d).

(11) From subsections (g) and (h) because these systems are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(e) The following systems of records are from 5 U.S.C. 552a (d)(1) and (e)(1).

(1) Grants of Confidentiality Files (GCF) (JUSTICE/DEA-022).

(2) DEA Applicant Investigations (JUSTICE/DEA-024).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d)(1) because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning an applicant for a grant of confidentiality with DEA. Permitting access to the information supplied by persons after a promise of confidentiality has been given could reveal the identity of the source of the information and constitute a breach of the promised confidentiality on the part of the Drug Enforcement Administration. Such breaches ultimately would restrict the free flow of information vital to a determination of an applicant's qualifications for a grant.

(2) From subsection (e)(1) because in the collection of information for investigative and evaluative purposes, it is impossible to determine in advance what exact information may be of assistance in determining the qualifica-

tions and suitability of a candidate. Information which may appear irrelevant, when combined with other apparently irrelevant information can on occasion, provide a composite picture of an applicant which assists in determining whether a grant of confidentiality is warranted.

(g) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a (j) (2) from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G), (H) and (I), (e) (5) and (8), (f), and (g) of 5 U.S.C. 552a; in addition, the following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a (k)(1) and (k)(2) from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H) and (I), and (f) of 5 U.S.C. 552a:

Freedom of Information/Privacy Act Records (JUSTICE/DEA-010).

These exemptions apply only to the extent that the records contained in this system have been obtained from other systems of records maintained by the Drug Enforcement Administration for which exemptions from one or more of the foregoing provisions of the Privacy Act of 1974 have been promulgated. The exemption claimed for this system of records applies only to records obtained from such other Drug Enforcement Administration systems and only to the same extent as the records contained in such other systems have been exempted.

(h) The system of records listed under paragraph (g) of this section is exempted for the following reasons:

(1) In the course of processing requests for records pursuant to the Freedom of Information Act (5 U.S.C. 552) or for access or correction of records pursuant to the Privacy Act (5 U.S.C. 552a), it is frequently necessary to search for records in systems of records for which exemptions have been claimed pursuant to 5 U.S.C. 552a (j) or (k). When records are located in said systems, it is frequently necessary to prepare copies for the purpose of consulting with agency personnel or with other agencies, either with regard to determining whether or to what extent the records shoud be disclosed, or access provided, or correction made or denied, or for review in the event of administrative appeal or judicial review.

(2) If records otherwise exempt pursuant to published rules should lose their exempt character when taken from such exempt systems for the purpose of compliance with the Freedom of Information Act and the Privacy Act in reviewing such records and making determination with regard to disclosure, access, and the Department of Justice in claiming correction, the purpose of the Privacy Act in providing such exemptions, and such exemptions would be defeated and nullified. The proper, efficient, and timely processing of citizens' requests pursuant to said Acts would be hindered and impeded.

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 688-77, 42 FR 10001, Feb. 18, 1977; AAG/A Order No. 68-81, 46 FR 32866, June 25, 1981]

§ 16.99 Exemption of Immigration and Naturalization Service System—Limited access.

(a) The following subsystems of the Immigration and Naturalization Service Index System are exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G), (H) and (I), (e) (5) and (8), (f), (g), and (h):

(1) Agency Information Control Record Index.

(2) Alien Enemy Index.

(3) Centralized Index.

(4) Congressional Mail Unit Index.

(5) Air Detail Office Index.

(6) Anti-smuggling Index (general).

(7) Anti-smuggling Information Centers Systems for Canadian and Mexican Borders.

(8) Border Patrol Sectors General Index System.

(9) Contact Index.

(10) Criminal, Immoral, Narcotic, Racketeer and Subversive Indexes.

(11) Enforcement Correspondence Control Index System.

(12) Document Vendors and Alterers Index.

(13) Informant Index.

(14) Suspect Third Party Index.

(15) Examination Correspondence Control Index.

(16) Extention Training Enrollee Index.

(17) Intelligence Index.

(18) Naturalization and Citizenship Indexes.

(19) Personnel Investigations Unit Indexes.

(20) Service Look-Out Subsystem.

(21) White House and Attorney General Correspondence Control Index.

(22) Fraudulent Document Center Index.

(23) Emergency Reassignment Index.

(24) Alien Documentation, Identification, and Telecommunication (ADIT) System.

These exemptions apply to the extent that information in these subsystems is subject to exemption pursuant to 5 U.S.C. 552a (j) and (k).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting for disclosure pursuant to the routine uses published for these subsystems would permit the subject of a criminal or civil investigation to obtain valuable information concerning the nature of that investigation and present a serious impediment to law enforcement.

(2) From subsection (c)(4) since an exemption is being claimed for subsection (d), this subsection will not be applicable.

(3) From subsection (d) because access to the records contained in these subsystems would inform the subject of a criminal or civil investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and present a serious impediment to law enforcement.

(4) From subsection (e)(1) because in the course of criminal or civil investigations, the Immigration and Naturalization Service often obtains information concerning the violation of laws other than those relating to violations over which INS has investigative jurisdiction. In the interests of effective law enforcement, it is necessary that INS retain this information since it can aid in establishing patterns of criminal activity and provide valuable leads for those law enforcement agencies that are charged with enforcing other segments of the criminal law.

(5) From subsection (e)(2) because in a criminal or civil investigation, the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection or apprehension.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life or physical safety of confidential informants.

(7) From subsections (e)(4) (G) and (H) because these subsystems of records are exempt from individual access pursuant to subsection (j) of the Privacy Act of 1974.

(8) From subsection (e)(4)(I) because the Immigration and Naturalization Service maintains the confidentiality of sources of information in order to protect their privacy and physical safety and to maintain the confidentiality of their cooperation. The publication of categories of sources would constitute a breach of confidentiality on the part of INS and restrict the free flow of information essential to effective law enforcement.

(9) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of crimi-

nal intelligence necessary for effective law enforcement.

(10) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the Immigration and Naturalization Service's ability to issue administrative subpoenas and could reveal investigative techniques and procedures.

(11) From subsection (f) because these subsystems of records have been exempted from the access provisions of subsection (d).

(12) From subsection (g) because these subsystems of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(13) From subsection (h) because to permit the parent of any minor, or the legal guardian of an individual who has been legally declared incompetent to obtain access to a record which is exempt to the individual would be a serious impediment to law enforcement in that it would enable the individual by himself or through the aid of others, to avoid detection or apprehension.

(14) In addition, these subsystems of records are exempt from compliance with the following provisions of the Privacy Act of 1974 (5 U.S.C. 552a), subsections (c)(3), (d), (e)(1), (e)(14) (G), (H) and (I), and (f) to the extent that the records contained in these subsystems are classified pursuant to Executive order.

(c) The Border Patrol Academy Index Subsystem is exempt from 5 U.S.C. 552a (d) and (f).

This exemption applies only to the extent that information in this subsystem is subject to exemption pursuant to 5 U.S.C. 552a(k).

(d) Exemptions for the particular subsections are justified for the following reasons.

(1) From subsection (d) because exemption is claimed only for those testing and examination materials used to determine an individual's qualifications for retention and promotion in the Immigration and Naturalization Service. This is necessary to protect the integrity of testing materials and to insure fair and uniform examinations.

(2) From subsection (f) because the subsystem of records has been exempted from the access provisions of subsection (d).

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 688-77, 42 FR 10001, Feb. 18, 1977]

§ 16.100 Exemption of Law Enforcement Assistance Administration System—Limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) The Civil Rights Investigative System (JUSTICE/LEAA-008). This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(b) Exemption from subsection (d) is claimed since access to information in the Civil Rights Investigative System prior to final administrative resolution will deter conciliation and compliance efforts. Consistent with the legislative purpose of the Privacy Act of 1974, decisions to release information from the system will be made on a case-by-case basis and information will be made available where it does not compromise the complaint and compliance process. In addition, where explicit promises of confidentiality must be made to a source during an investigation, disclosure will be limited to the extent that the identity of such confidential sources will not be compromised.

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by AAG/A Order 5-78, 43 FR 36439, Aug. 17, 1978; Order No. 43-80, 45 FR 6780, Jan. 30, 1980]

§ 16.101 Exemption of U.S. Marshals Service Systems—Limited access, as indicated.

(a) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (2) and (3), (e)(4) (G) and (H), (e)(8), and (f) and (g):

(1) Warrant Information System (JUSTICE/USM-007).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of disclosure accounting for disclosure made pursuant to subsection (b) of the Act, including those permitted under routine uses published for this system of records would permit a person to determine whether he is the subject of a criminal investigation, and to determine whether a warrant has been issued against him, and therefore present a serious impediment to law enforcement.

(2) From subsection (c)(4) since an exemption is being claimed for subsection (d) of the Act, this section is inapplicable.

(3) From subsection (d) because access to records would inform a person for whom a federal warrant has been issued of the nature and scope of information obtained as to his activities, of the identity of informants, and afford the person sufficient information to enable the subject to avoid apprehension. These factors would present a serious impediment to law enforcement in that they would thwart the warrant process and endanger lives of informants etc.

(4) From subsection (e)(2) because the requirement that information be collected to the greatest extent practical from the subject individual would present a serious impediment to law enforcement because the subject of the investigation or prosecution would be placed on notice as to the existence of the warrant and would therefore be able to avoid detection or apprehension.

(5) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal identity of confidential informants.

(6) From subsections (e)(4) (G) and (H) since an exemption is being claimed for subsections (f) and (d) of the Act, these subsections are inapplicable.

(7) From subsection (e)(8) because the individual notice requirement of this subsection would present a serious impediment to law enforcement in that it would give persons sufficient warning to avoid warrants, subpoena, etc.

(8) From subsection (f) because procedures for notice to an individual pursuant to subsection (f)(1) as to existence of records pertaining to him dealing with warrants must be exempted because such notice to individuals would be detrimental to the successful service of a warrant. Since an exemption is being claimed for subsection (d) of the Act the rules required pursuant to subsections (f) (2) through (5) are inapplicable to this system of records.

(9) From subsection (g) since an exemption is being claimed for subsection (d) and (f) this section is inapplicable and is exempted for the reasons set forth for these subsections.

(c) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (2) and (3), (e)(4) (G) and (H), (e)(8), (f)(2) and (g):

(1) Witness Security System (JUSTICE/USM-008).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act including those permitted under routine uses published for this system of records would hamper the effective functioning of the Witness Security Program which by its very nature requires strict confidentiality vis-a-vis the records.

(2) From subsection (c)(4) for the reason stated in (b)(2) of this section.

(3) From subsection (d) because the United States Marshals Service Witness Security Program aids efforts of law enforcement officials to prevent, control or reduce crime. Access to records would present a serious impediment to effective law enforcement through revelation of confidential sources and through disclosure of op-

erating procedures of the program, and through increased exposure of the program to the public.

(4) From subsection (e)(2) because in the Witness Security Program the requirement that information be collected to the greatest extent possible from the subject individual would constitute an impediment to the program, which is sometimes dependent on sources other than the subject witness for verification of information pertaining to the witness.

(5) From subsection (e)(3) for the reason stated in (b)(5) of this section.

(6) From subsections (e)(4) (G) and (H) for the reason stated in (b)(6) of this section.

(7) From subsection (e)(8) for the reason stated in (b)(7) of this section.

(8) From subsection (f)(2) since an exemption is being claimed for subsection (d) of the Act the rules required pursuant to subsection (f) (2) through (5) are inapplicable to this system of records.

(9) From subsection (g) for the reason stated in (b)(9) of this section.

(e) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (2) and (3), (e)(4) (G) and (H), (f) and (g):

(1) Internal Inspection Information System (JUSTICE/USM-002)—Limited access.

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act where disclosure of such record would reveal a source who furnished information to the government in confidence.

(2) From subsection (a)(4) for the reason stated in (b)(2) of this section.

(3) From subsection (d) because access to information in this system which was obtained from a confidential source would impede the effective investigation into employee conduct for purposes of determining suitability, eligibility, or qualifications for Federal employment in that it would inhibit furnishing of information by sources which desire to remain confidential.

(4) From subsection (e)(2) for the reason stated in (b)(4) of this section.

(5) From subsection (e)(3) for the reason stated in (b)(5) of this section.

(6) From subsections (e)(4) (G) and (H) for the reason stated in (b)(6) of this section.

(7) From subsection (f) for the reason stated in (b)(8) of this section.

(8) From subsection (g) for the reason stated in (b)(9) of this section.

(g) Consistent with the legislative purpose of the Privacy Act of 1974, the United States Marshals Service will grant access to nonexempt material in records which are maintained by the Service. Disclosure will be governed by the Department's Privacy Regulations, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal, civil or regulatory violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from this system will be made on a case-by-case basis.

§ 16.102 Exemption of Drug Enforcement Administration and Immigration and Naturalization Service Joint System of Records.

(a) The following system of records is exempted pursuant to provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G), (H), and (I), (e)(5) and (8), (f), (g), and (h) of 5 U.S.C. 552a; in addition the following system of records is exempted pursuant to the provisions of 5 U.S.C. 552 (k)(1) and (k)(2) from subsections (c)(3), (d), (e)(1), (e)(4)

(G), (H), and (I), and (f) of 5 U.S.C. 552a.

(1) Automated Intelligence Record System (Pathfinder), JUSTICE/DEA-INS-111. These exemptions apply to the extent that information in those systems is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1) and (k)(2).

(b) The system of records listed under paragraph (a) of this section is exempted, for the reasons set forth from the following provisions of 5 U.S.C. 552a:

(1)(c)(3). The release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for these systems of records, would permit the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to determine whether he is the subject of investigation, or to obtain valuable information concerning the nature of that investigation, and the information obtained, or the identity of witnesses and informants and would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record; such notice requirement under subsection (f)(1) is specifically exempted for these systems of records.

(2)(c)(4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this subsection is inapplicable to the extent that these systems of records are exempted from subsection (d).

(3)(d). Access to the records contained in these systems would inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation, or the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement because they could prevent the successful completion of the investigation, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(4)(e)(1). The notices of these systems of records published in the FEDERAL REGISTER set forth the basic statutory or related authority for maintenance of this system. However, in the course of criminal or other law enforcement investigations, cases, and matters, the Immigration and Naturalization Service or the Drug Enforcement Administration will occasionally obtain information concerning actual or potential violations of law that are not strictly within its statutory or other authority or may compile information in the course of an investigation which may not be relevant to a specific prosecution. In the interests of effective law enforcement, it is necessary to retain such information in these systems of records since it can aid in establishing patterns of criminal activity and can provide valuable leads for federal and other law enforcement agencies.

(5)(e)(2). In a criminal investigation or prosecution, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation or prosecution would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6)(e)(3). The requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(7)(e)(4) (G) and (H). Since an exemption is being claimed for subsections (f) (Agency Rules) and (d) (Access to Records) of the Act these subsections are inapplicable to the extent that these systems of records are exempted from subsections (f) and (d).

(8)(e)(4)(I). The categories of sources of the records in these systems have been published in the FEDERAL REGISTER in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in these systems, exemption from this provision is necessary in order to protect the confidentiality of the sources of criminal and other law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(9)(e)(5). In the collection of information for criminal law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can often only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators, in-

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telligence analysts, and government attorneys in exercising their judgment in reporting on information and investigations and impede the development of criminal or other intelligence necessary for effective law enforcement.

(10)(e)(8). The individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue warrants or subpoenas and could reveal investigative techniques, procedures, or evidence.

(11)(f). Procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to him dealing with an actual or potential criminal, civil, or regulatory investigation or prosecution must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or prosecution pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsections (f) (2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

(12)(g). Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable, and is exempted for the reasons set forth for those subsections, to the extent that these systems of records are exempted from subsections (d) and (f).

(13)(h). Since an exemption is being claimed for subsection (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable, and is exempted for the reasons set forth for those subsections, to the extent that these systems of records are exempted from subsections (d) and (f).

(14) In addition, exemption is claimed for these systems of records from compliance with the following provisions of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to the provisions of 5 U.S.C. 552a(k)(1): subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) to the extent that the records contained in these systems are specifically authorized to be kept secret in the interests of national defense and foreign policy.

[Order No. 742-77, 42 FR 40907, Aug. 12, 1977]

Subpart F—Public Observation of Parole Commission Meetings

AUTHORITY: 18 U.S.C. 4203(a) (1), 5 U.S.C. 552b (g).

SOURCE: 42 FR 14713, Mar. 16, 1977, unless otherwise noted.

§ 16.200 Definitions.

As used in this part: (a) The term Commission means the United States Parole Commision and any subdivision thereof authorized to act on its behalf.

(b) The term meeting refers to the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.

(c) Specifically included in the term meeting are;

(1) Meetings of the Commission required to be held by 18 U.S.C. 4203(a);

(2) Special meetings of the Commission called pursuant to 18 U.S.C. 4204(a)(1);

(3) Meetings of the National Commissioners in original jurisdiction cases pursuant to 28 CFR 2.17(a);

(4) Meetings of the entire Commission to determine original jurisdiction appeal cases pursuant to 28 CFR 2.27; and

(5) Meetings of the National Appeals Board pursuant to 28 CFR 2.26.

(6) Meetings of the Commission to conduct a hearing on the record in conjunction with applications for certificates of exemption under section 504(a) of the Labor-Management Reporting and Disclosure Act of 1959, and section 411 of the Employee Retirement Income Security Act of 1974 (28 CFR 4.1-17 and 28 CFR 4a.1-17).

(d) Specifically excluded from the term meeting are:

(1) Determination made through independent voting of the Commissioners without the joint deliberation of the number of Commissioners required to take such action, pursuant to § 16.201;

(2) Original jurisdiction cases determined by sequential vote pursuant to 28 CFR 2.17;

(3) Cases determined by sequential vote pursuant to 28 CFR 2.24 and 2.25;

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(4) National Appeals Board cases determined by sequential vote pursuant to 28 CFR 2.26;

(5) Meetings of special committees of Commissioners not constituting a quorum of the Commission, which may be established by the Chairman to report and make recommendations to the Commission or the Chairman on any matter.

(6) Determinations required or permitted by these regulations to open or close a meeting, or to withhold or disclose documents or information pertaining to a meeting.

(e) All other terms used in this part shall be deemed to have the same meaning as identical terms used in Chapter I, Part 2, of Title 28, of the Code of Federal Regulations.

[42 FR 14713, Mar. 16, 1977, as amended at 43 FR 4978, Feb. 7, 1978]

§ 16.201 Voting by the Commissioners without joint deliberation.

(a) Whenever the Commission's Chairman so directs, any matter which (1) does not appear to require joint deliberation among the members of the Commission, or (2) by reason of its urgency, cannot be scheduled for consideration at a Commission meeting, may be disposed of by presentation of the matter separately to each of the members of the Commission. After consideration of the matter each Commission member shall report his vote to the Chairman.

(b) Whenever any member of the Commission so requests, any matter presented to the Commissioners for disposition pursuant to paragraph (a) of this section shall be withdrawn and scheduled instead for consideration at a Commission meeting.

(c) The provisions of § 16.206(a) of these rules shall apply in the case of any Commission determination made pursuant to this section.

§ 16.202 Open meetings.

(a) Every portion of every meeting of the Commission shall be open to public observation unless closed to the public pursuant to the provisions of § 16.203 (Formal Procedure) or § 16.205 (Informal Procedure).

(b) The attendance of any member of the public is conditioned upon the orderly demeanor of such person during the conduct of Commission business. The public shall be permitted to observe and to take notes, but unless prior permission is granted by the Commission, shall not be permitted to record or photograph by means of any mechanical or electronic device any portion of meetings which are open to the public.

(c) The Commission shall be responsible for arranging a suitable site for each open Commission meeting so that ample seating, visibility, and acoustics are provided to the public and ample security measures are employed for the protection of Commissioners and Staff. The Commission shall be responsible for recording or developing the minutes of Commission meetings.

(d) Public notice of open meetings shall be given as prescribed in § 16.204(a), and a record of votes kept pursuant to § 16.206(a).

§ 16.203 Closed meetings—Formal procedure.

(a) The Commission, by majority vote, may close to public observation any meeting or portion thereof, and withhold from the public announcement concerning such meeting any information, if public observation or the furnishing of such information is likely to:

(1) Disclose matters: (i) Specifically authorized under criteria established by an executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission or any agency of the Government of the United States;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552, or the Federal Rules of Criminal Procedure): *Provided,* That such statute or rule (i) requires that the matters be withheld in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld, including exempted mate-

rial under the Privacy Act of 1974 or the Commission's Alternate Means of Access under the Privacy Act of 1974, as set forth at 28 CFR 16.85;

(4) Disclose a trade secret or commercial or financial information obtained from any person, corporation, business, labor or pension organization, which is privileged or obtained upon a promise of confidentiality, including information concerning the financial condition or funding of labor or pension organizations, or the financial condition of any individual, in conjunction with applications for exemption under 29 U.S.C. 504 and 1111, and information concerning income, assets and liabilities of inmates, and persons on supervision;

(5) Involve accusing any person of a crime or formally censuring any person;

(6) Disclose information of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose an investigatory record compiled for law enforcement purposes, or information derived from such a record, which describes the criminal history or associations of any person under the Commission's jurisdiction or which describes the involvement of any person in the commission of a crime, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trail or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed Commission action except where

(i) The Commission has already publicly disclosed the content or nature of its proposed action or

(ii) The Commission is required by law to make such disclosure on its own initiative prior to taking final Commission action on such proposal;

(9) Specifically concern the Commission's issuance of subpoena or participation in a civil action or proceeding; or

(10) Specifically concern the initiation, conduct, or disposition of a particular case of formal adjudication pursuant to the procedures in 5 U.S.C. 554, or of any case involving a determination on the record after opportunity for a hearing. Included under the above terms are:

(i) Record review hearings following opportunity for an in-person hearing pursuant to the procedures of 28 CFR 4.1 through 4.17 and 28 CFR 4a.1 through 4a.17 (governing applications for certificates of exemption under the Labor-Management Reporting and Disclosure Act of 1959 and the Employee Retirement Income Security Act of 1974, and

(ii) The initiation, conduct, or disposition by the Commission of any matter pursuant to the procedures of 28 CFR 2.1 through 2.58 (parole, release, supervision, and recommitment of prisoners, youth offenders, and juvenile delinquents).

(b) *Public Interest Provision.* Notwithstanding the exemptions at paragraphs (a)(1) through (a)(10) of this section, the Commission may conduct a meeting or portion of a meeting in public when the Commission determines, in its discretion, that the public interest in an open meeting clearly outweighs the need for confidentiality.

(c) *Nonpublic matter in announcements.* The Commission may delete from any announcement or notice required in these regulations information the disclosure of which would be likely to have any of the consequences described in paragraphs (a)(1) through (a)(10) of this section, including the name of any individual considered by the Commission in any case of formal or informal adjudication.

(d) *Voting and certification.* (1) A separate recorded vote of the Commission shall be taken with respect to each meeting or portion thereof which is proposed to be closed, and with respect to any information which is proposed to be withheld pursuant to this section. Voting by proxy shall not be permitted. In the alternative, the Commission may, by a single majority vote, close to public observation a series of meetings, or portion(s) thereof or withhold information concerning such series of meetings, provided that:

(i) Each meeting in such series involves the same particular matters, and

(ii) Each meeting is scheduled to be held no more than thirty days after the initial meeting in the series.

(2) Upon the request of any Commissioner, the Commission shall make a determination as to closure pursuant to this subsection if any person whose interests may be directly affected by a portion of a meeting requests the Commission to close such portion or portions to the public observation for any of the grounds specified in paragraph (a) (5), (6) or (7) of this section.

(3) The determination to close any meeting to public observation pursuant to this section shall be made at least one week prior to the meeting or the first of a series of meetings as the case may be. If a majority of the Commissioners determines by recorded vote that agency business requires the meeting to take place at any earlier date, the closure determination and announcement thereof shall be made at the earliest practicable time. Within one day of any vote taken on whether to close a meeting under this section, the Commission shall make available to the public a written record reflecting the vote of each Commissioner on the question, including a full written explanation of its action in closing the meeting, portion(s) thereof, or series of meetings, together with a list of all persons expected to attend the meeting(s) or portion(s) thereof and their affiliation, subject to the provisions of paragraph (c) of this section.

(4) For every meeting or series of meetings closed pursuant to this section, the General Counsel of the Parole Commission shall publicly certify that, in Counsel's opinion, the meeting may be closed to the public and shall state each relevant exemptive provision.

§ 16.204 Public notice.

(a) *Requirements.* Every open meeting and meeting closed pursuant to § 16.203 shall be preceded by a public announcement posted before the main entrance to the Chairman's Office at the Commission's headquarters, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815-7286, and, in the case of a meeting held elsewhere, in a prominent place at the location in which the meeting will be held. Such announcement shall be transmitted to the FEDERAL REGISTER for publication and, in addition, may be issued through the Department of Justice, Office of Public Affairs, as a press release, or by such other means as the Commission shall deem reasonable and appropriate. The announcement shall furnish:

(1) A brief description of the subject matter to be discussed;

(2) The date, place, and approximate time of the meeting;

(3) Whether the meeting will be open or closed to public observation; and

(4) The name and telephone number of the official designated to respond to requests for information concerning the meeting. See § 16.205(d) for the notice requirement applicable to meetings closed pursuant to that section.

(b) *Time of notice.* The announcement required by this section shall be released to the public at least one week prior to the meeting announced therein except where a majority of the members of the Commission determines by a recorded vote that Commission business requires earlier consideration. In the event of such a determination, the announcement shall be made at the earliest practicable time.

(c) *Amendments to notice.* The time or place of a meeting may be changed following the announcement only if the Commission publicly announces such change at the earliest practicable time. The subject matter of a meeting, or determination of the Commission to open or close a meeting, or portion of a meeting, to the public may be changed following the announcement only if:

(1) A majority of the entire membership of the Commission determines by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible, and

(2) The Commission publicly announces such change and the vote of each member upon such change at the earliest practicable time: *Provided,* That individual items which have been announced for Commission consideration at a closed meeting may be deleted without notice.

[42 FR 14713, Mar. 16, 1977 as amended by Order No. 960-81, 46 FR 52357, Oct. 27, 1981]

§ 16.205 Closed meetings—Informal procedures.

(a) *Finding.* Based upon a review of the meetings of the U.S. Parole Commission since the effective date of the Parole Commission and Reorganization Act (May 14, 1976), the regulations issued pursuant thereto (28 CFR Part 2) the experience of the U.S. Board of Parole, and the regulations pertaining to the Commission's authority under 29 U.S.C. 504 and 29 U.S.C. 1111 (28 CFR Parts 4 and 4a), the Commission finds that the majority of its meetings may properly be closed to the public pursuant to 5 U.S.C. 552 (d)(4) and (c)(10). The major part of normal Commission business lies in the adjudication of individual parole cases, all of which proceedings commence with an initial parole or revocation hearing and are determined on the record thereof.

Original jurisdiction cases are decided at bi-monthly meetings of the National Commissioners (28 CFR 2.17) and by the entire Commission in conjunction with each business meeting of the Commission (held at least quarterly) (28 CFR 2.27).

The National Appeals Board normally decides cases by sequential vote on a daily basis, but may meet from time to time for joint deliberations. In the period from October, 1975 through September, 1976, the National Appeals Board made 2,072 Appellate decisions.

Finally, over the last two years the Commission determined eleven cases under the Labor and Pension Acts, which are proceedings pursuant to 5 U.S.C. 554. The only meetings of the Commission not of an adjudicative nature involving the most sensitive inquiry into the personal background and behavior of the individual concerned, or involving sensitive financial information concerning the parties before the Commission, are the normal business meetings of the Commission, which are held at least quarterly.

(b) *Meetings to which applicable.* The following types of meetings may be closed in the event that a majority of the Commissioners present at the meeting, and authorized to act on behalf of the Commission, votes by recorded vote at the beginning of each meeting or portion thereof, to close the meeting or portions thereof:

(1) Original jurisdiction initial and appellate case deliberations conducted pursuant to 28 CFR 2.17 and 2.27;

(2) National Appeals Board deliberations pursuant to 28 CFR 2.26;

(3) Meetings of the Commission to conduct a hearing on the record regarding applications for certificates of exemption pursuant to the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 504, and the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1111 (28 CFR 4.1-17 and 29 CFR 4a.1-17).

(c) *Written record of action to close meeting.* In the case of a meeting or portion of a meeting closed pursuant to this section, the Commission shall make available to the public as soon as practicable:

(1) A written record reflecting the vote of each member of the Commission to close the meeting; and

(2) A certification by the Commission's General Counsel to the effect that in Counsel's opinion, the meeting may be closed to the public, which certification shall state each relevant exemptive provision.

(d) *Public notice.* In the case of meetings closed pursuant to this section the Commission shall make a public announcement of the subject matter to be considered, and the date, place, and time of the meeting. The announcement described herein shall be released to the public at the earliest practicable time.

§ 16.206 Transcripts, minutes, and miscellaneous documents concerning Commission meetings.

(a) In the case of any Commission meeting, whether open or closed, the Commission shall maintain and make available for public inspection a record of the final vote of each member on rules, statements of policy, and interpretations adopted by it: 18 U.S.C. 4203(d).

(b) The Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public pursuant to § 16.203. In the case of a meeting, or portion of a meeting, closed to the public pursuant to § 16.205 of these regulations, the Commission may maintain either the transcript or recording described above, or a set of minutes unless a recording is required by Title 18, U.S.C. 4208(f). The minutes required by this section shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each Commissioner on the question). All documents considered in connection with any action shall be identified in such minutes.

(c) The Commission shall retain a copy of every certification executed by the General Counsel's Office pursuant to these regulations, together with a statement from the presiding officer of the meeting, or portion of a meeting to which the certification applies, setting forth the time and place of the meeting, and the persons present.

(d) Nothing herein shall affect any other provision in Commission procedures or regulations requiring the preparation and maintenance of a record of all official actions of the Commission.

§ 16.207 Public access to nonexempt transcripts and minutes of closed Commission meetings—Documents used at meetings—Record retention.

(a) *Public access to records.* Within a reasonable time after any closed meeting, the Commission shall make available to the public, in the Commission's Public Reading Room located at 5550 Friendship Boulevard, Chevy Chase, Maryland 20815-7286, the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any item of the testimony of any witness received at such meeting, maintained hereunder, except for such item or items of such discussion or testimony which contain information exempt under any provision of the Government in the Sunshine Act (Pub. L. 94-409), or of any amendment thereto. Copies of nonexempt transcripts, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(b) Access to documents identified or discussed in any Commission meeting, open or closed, shall be governed by Department of Justice regulations at this Part 16, Subparts C and D. The Commission reserves the right to invoke statutory exemptions to disclosure of such documents under 5 U.S.C. 552 and 552a, and applicable regulations. The exemptions provided in 5 U.S.C. 552b(c) shall apply to any request made pursuant to 5 U.S.C. 552 or 552a to copy and inspect any transcripts, recordings or minutes prepared or maintained pursuant hereto.

(c) *Retention of records.* The Commission shall maintain a complete verbatim copy of the transcript, or a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Commission proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

[42 FR 14713, Mar. 16, 1977, as amended by Order No. 960-81, 46 FR 52357, Oct. 27, 1981]

§ 16.208 Annual report.

The Commission shall report annually to Congress regarding its compliance with Sunshine Act requirements, including a tabulation of the total number of meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the Commission under this section, including any costs assessed against the Commission in such litigation and whether or not paid.

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AUTHORITY: Executive Order 12065 of June 28, 1978, 5 U.S.C. 301; 28 U.S.C. 509 and 510.

SOURCE: Order No. 920-80, 45 FR 81490, Dec. 10, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 17.1 Purpose.

The purpose of this regulation is to insure that information within the Department of Justice, herein referred to as the Department, relating to the national security (as used hereinafter, a collective term which means the national defense and foreign relations of the United States) is protected, pursuant to the provisions of Executive Order No. 12065 and its implementing directive (see §§ 17.2(a) and 17.2(b)). This regulation prescribes: a progressive system for classification, downgrading and declassification; safeguarding policies and procedures; a monitoring system to insure the effectiveness of the National Security Information Program throughout the Department; and a system for reporting and investigating security violations and sanctions for such violations. The provisions of this regulation become effective upon approval by the Attorney General.

§ 17.2 Authority.

This regulation is issued in compliance with, and as a supplement to, the provisions of:

(a) Executive Order No. 12065 entitled, "National Security Information," dated June 28, 1978.

(b) The "Information Security Oversight Office Directive No. 1 Concerning National Security Information," dated October 2, 1978.

(c) 28 CFR 0.75(p), which outlines the security policy functions of the Justice Management Division (Security Programs Staff).

(d) Department Order 2600.2A entitled, "Security Programs and Responsibilities."

§ 17.3 Applicability.

This regulation governs the Department's National Security Information Program and takes precedence over all Department publications affecting that program. It establishes, for uniform application throughout the Department, the policies, standards, criteria and procedures for the classification, downgrading, declassification and safeguarding of National Security Information or material originated, produced or handled by, or in the custody of, the Department.

§ 17.4 Application to non-executive branch personnel.

Except as otherwise provided herein (see § 17.111), the provisions of this regulation apply to non-contractor personnel outside of the Executive Branch and to contractor personnel or employees who are entrusted with National Security Information originated within or in the custody of the Department. Clearance procedures for the aforementioned personnel are contained in Department Orders 2620.6 and 2600.3, respectively. Procedures for clearing Department personnel are contained in § 17.113 of this regulation.

§ 17.5 Atomic Energy Act.

Nothing in this regulation supersedes any requirements made by or under the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq. as amended. "Restricted Data" shall be handled, protected, classified, downgraded and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and the regulations issued pursuant thereto.

Subpart B—Security Classification

§ 17.6 Policy.

(a) Except as provided in § 17.5, Executive Order No. 12065, as implemented by this regulation, provides the only basis for classifying information. The purpose of Executive Order No. 12065, as stated in its preamble, is "* * * to balance the public's interest in access to Government information with the need to protect certain National Security Information from disclosure * * *."

(b) Unnecessary classification and higher than necessary classification shall be scrupulously avoided. Executive Order No. 12065 provides that "If there is reasonable doubt which designation is appropriate, or whether the information should be classified at all, the less restrictive designation should be used, or the information should not be classified."

(c) Classification shall be continued no longer than is necessary for the protection of national security. Each decision to classify also requires a simultaneous determination of the length of time such classification must remain in force.

§ 17.7 Improper use of classification.

(a) Information may not be classified as Top Secret, Secret or Confidential, except for the purpose of preventing damage to the national security and in accordance with the provisions of Executive Order No. 12065, its implementing directive and this regulation.

(b) Improper classification actions shall be reported initially to the appropriate Security Programs Manager within the Department. The Department Security Officer should, in all cases, be notified of the number of cases of improper classification within the Department by the Security Programs Manager concerned.

§ 17.8 Classification categories.

(a) *General.* Official information or material which requires protection against unauthorized disclosure in the interests of national security shall be classified in one of three categories, namely, "Top Secret", "Secret" or "Confidential". No other categories shall be used to identify official information or material as requiring protection in the interests of national security, except as otherwise expressly provided by statute.

(b) *Top Secret.* "Top Secret" is the designation which shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security. Examples of "exceptionally grave damage" could include armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of extremely sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security. This classification shall be used with restraint.

(c) *Secret.* "Secret" is the designation which shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security. Examples of "serious damage" could include disruption of foreign relations affecting the national security; impairment of a program or policy directly related to the national security; revelation of military plans or intelligence operations; and compromise of scientific or technological developments relating to national security.

(d) *Confidential.* "Confidential" is the designation which shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause identifiable damage to the national security. Examples of "identifiable damage" could include the compromise of information which indicates strength of armed forces in the United States and overseas areas; disclosure of technical information used for intelligence operations; a written inspection report of classified areas; revelation of performance characteristics, test data, design, and production data on intelligence gathering equipment.

§ 17.9 Original classification authority.

Authority for original classification of information as Top Secret, Secret or Confidential may be exercised only by the Attorney General and by officials to whom such authority is specifically delegated in accordance with and subject to the restrictions of this Section. In the absence of an authorized classifier, the person designated to act in his or her absence may exercise the classifier's authority.

(a) *Top Secret.* Only the Attorney General may delegate original Top Secret classification authority. Such delegation may only be made to principal subordinate officials who are determined to have frequent need to exercise such authority. The delegation of authority must specify whether the Top Secret classification authority is authorized to delegate original Secret and Confidential classification authority.

(b) *Secret and Confidential.* Only the Attorney General and officials with delegated original Top Secret classification authority who are specifically authorized in writing to do so, may delegate original Secret and Confidential classification authority to subordinate officials whom they determine to have frequent need to exercise such authority.

(c) Each delegation of original classification authority shall be in writing, maintained by the Department Security Officer and shall specify the title of the position held by the recipient.

(d) Except for the Attorney General, officials to whom original classification authority is delegated may not, under any circumstances, redelegate such authority. However, those officials so designated by the Attorney General may delegate a lesser level of classification authority.

(e) Annual reviews, and special review as requested by the Department Security Officer, shall be made by Security Programs Managers to ensure that those to whom such authority has been delegated have demonstrated a continuing need to exercise it. The annual reviews are to be conducted at the end of each calendar year. Findings of this review are to be forwarded to the Department Security Officer.

§ 17.10 Classification duration.

(a) At the time a determination is made by an official to originally classify information as Top Secret, Secret or Confidential, a simultaneous decision must be made by that official as to the duration of time such classification must remain in force. In arriving at the latter decision, the classifier must exercise careful judgment as to how far in the future the basis for original classification will remain valid.

(b) Except as provided in § 17.10(c) officials designated to exercise original classification authority, pursuant to this regulation, are authorized to prolong classification as follows:

(1) Original Top Secret classification authorities may prolong classification no more than 20 years from the date of original classification.

(2) Original Secret and Confidential classification authorities may prolong classification no more than six years from the date of original classification.

(c) The classification of Foreign Government Information may be prolonged by an original Top Secret classification authority up to 30 years from the date of original classification or the date it was acquired or classified by the United States, whichever is earlier.

§ 17.11 Propriety of classification actions.

In accordance with § 17.155, all personnel assigning classifications to information within the Department are accountable for the propriety of such classifications, whether in the exercise of original classification authority or in the determination and application of classifications assigned in source documents or classification guides (i.e., derivative classification), and are required to maintain adequate records to support their classification actions.

§ 17.12 Challenges to classification.

If holders of classified information have reason to believe that the information is classified improperly or unnecessarily or that an overly-restrictive period for continued classification has been assigned, they are encouraged to challenge such classification with their Security Programs Manager or the classifier of the information, with a view to bringing about corrections.

§ 17.13 Accounting for classification actions.

The Department Security Officer shall establish, in coordination with the Information Security Oversight Office, a system for maintaining information on classification actions within the Department.

§ 17.14 Identification of classification authority.

Information or material classified under the provisions of this regulation shall indicate on its face, in the case of documents, or by notice or other means, in the case of material, the identity of the classifier. Such identification shall be shown on the "Classified by" line. In those cases where the personal identity of the authorized classifier would be classifiable, an alternate identification method may be used provided it is approved by the Department Security Officer.

§ 17.15 Derivative classification.

Information or material extracted or derived from a classified source document or classification guide and used in a Department originated document will be classified, or not classified, as the case may be, in accordance with the classification and downgrading markings shown in the source document or classification guide. The overall marking and paragraph marking of the source document should supply adeqate classification guidance to the person making the extraction. However, if paragraph markings are lacking, and if no classification guidance is included in the source document and no reference is made to an applicable classification guide which is available for use by the person making the extraction, the extracted or derived information or material will be classified in accordance with guidance specifically sought and received from the original classifier of the source material. If such guidance cannot be obtained, the information or material will be given the classification which corresponds to the overall marking of the source document.

§ 17.16 Positive judgment requirement.

Classification is a positive judgment, i.e., there must be an identifiable basis for classification, but both advantages and disadvantages to classifying must be weighed. All principles and criteria within this subpart must be considered before a classification determination is made or a classification marking is applied. If there is reasonable doubt which classification designation is appropriate, or whether the information should be classified at all, the less restrictive designation should be used, or the information should not be classified.

§ 17.17 Reasons for classification.

An evaluation of information pursuant to § 17.8 and § 17.18 forms the basis for classification. A document or other material is classified either: (1) Because of the classified information it contains which may be ascertained by study, analysis, observation or use of it; or (2) because of the classified information it may reveal when associated with other information, including that which the classifier knows already has been officially released into the public domain.

§ 17.18 Criteria for classification.

A determination to classify shall be made only if the information meets one or more of the criteria in § 17.18 (a) through (g) and if the unauthorized disclosure of the information could reasonably be expected to cause at least identifiable damage to the national security. The fact that information falls under one or more of the criteria shall not be presumed to mean that the information automatically meets the damage criteria. Information may not be considered for classification unless it concerns:

(a) Military plans, weapons, or operations;

(b) Foreign government information;

(c) Intelligence activities, sources or methods;

(d) Foreign relations or foreign activities of the United States;

(e) Scientific, technological, or economic matters relating to the national security;

(f) United States Government programs for safeguarding nuclear materials or facilities; or

(g) Other categories of information which are related to national security and which require protection against unauthorized disclosure as determined by the President, by a person designated by the President or by an Agency Head. Requests for any such additional category of information shall be forwarded through the Department Security Officer to the Attorney General. Any additional categories of information must be reported promptly to the Director of the Information Security Oversight Office.

§ 17.19 Duration of classification.

(a) Except as provided in § 17.19(b), dates or events on which automatic declassification or review for declassification should occur shall be as early as the national security will permit and shall be no more than six years from the date of original classification.

(b) Classification may be prolonged for more than six years only by officials designated as original Top Secret classification authorities. This authority shall be used sparingly. In such cases, a declassification date or event, or a date for review, shall be set. This date or event shall be as early as national security permits and shall be no more than 20 years after original classification, except that for Foreign Government Information, the date or event may be up to 30 years after original classification. Classification may be extended beyond six years for one or more of the following reasons:

(1) The information is Foreign Government Information as defined in Executive Order No. 12065.

(2) The information reveals intelligence sources or methods which, if lost, would cause identifiable damage to the intelligence operation or to the safety of the source(s) involved.

(3) The information reveals capability data, the unauthorized disclosure of which can reasonably be expected to result in negating or nullifying the effectiveness of a system, installation, project or plan important to the national security.

(4) The information reveals specific foreign relations matters.

(c) In every case that classification is continued for more than six years, the identity of the original Top Secret classification authority and the reason(s), as set forth above, for the extension of classification beyond six years will be recorded as prescribed by Subpart D of this regulation. A specific reference to the pertinent paragraph(s) of this section will suffice to meet the requirement concerning the recording of the reason for extension of classification beyond six years on the document.

§ 17.20 Presumption of classification of Foreign Government Information.

Unauthorized disclosure of Foreign Government Information or the identity of a confidential foreign source is presumed to cause at least identifiable damage to the national security and accordingly shall be assigned a classification of at least "Confidential."

§ 17.21 Prohibitions.

(a) Classification may not be used to conceal violations of law, inefficiency, or administrative error, to prevent embarrassment to a person, organization or agency, or to restrain competition.

(b) Basic scientific research information not clearly related to the national security may not be classified.

(c) A product of non-government research and development that does not incorporate or reveal classified information to which the producer or developer was given prior access may not be classified under this Order until and unless the government acquires a proprietary interest in the product. This prohibition does not affect the provisions of Chapter 17 of Title 35, United States Code.

(d) References to classified documents, when such references do not disclose classified information, may not be classified or used as a basis for classification.

(e) Classification may not be used to limit dissemination of information that is not classifiable under the provisions of Executive Order No. 12065 or to prevent or delay the public release of such information.

(f) No document originated on or after 1 December 1978 may be classified after receipt of a request for the document under the Freedom of Information Act or the Mandatory Review provisions of this regulation (Subpart C) unless such classification is consistent with this regulation and is authorized by the Attorney General or the Deputy Attorney General pursuant to paragraph 1-606, Executive Order No. 12065. Documents originated before 1 December 1978 and subject to such a request may not be classified unless such classification is consistent with this regulation and is authorized by an official with Top Secret classification authority or by the Chairman, Department Review Committee. Classification authority under this provision shall be exercised personally, on a document by document basis.

(g) Classification may not be restored to documents already declassified and released to the public under this or prior Orders.

(h) Under no circumstances may a compilation of official public releases be classified.

§ 17.22 Effect of open publication.

Appearance in the public domain of information currently classified or being considered for classification does not preclude initial or continued classification; however, such disclosures require reevaluation of the information to determine whether the publication has been compromised to the degree that downgrading or declassification is required. Similar consideration must be given to related items of information in all programs, projects, cases or items incorporating or pertaining to the compromised items of information. In these instances, if the release is shown to have been competently made or authorized by an official of the Executive Branch authorized to declassify and release such information, classification of identified items shall no longer be continued. However, holders should continue classification until advised to the contrary by a competent Government authority.

§ 17.23 Compilation of information.

The general rule is that a compilation of unclassified items of information shall not be classified. In some circumstances, however, classification may be required if the combination of unclassified items of information together provide a basis for which classification is warranted. Classification on this basis shall be used sparingly and shall be fully supported with a written rationale which will be included in the material so classified.

§ 17.24 Requirement for issuance of classification guides.

If the head of the Office, Board, Division or Bureau determines that benefit would be obtained from the use of classification guides, such guides shall be issued, based upon classification determinations made by appropriate classification authorities.

§ 17.25 Responsibility for preparation.

Classification guides shall be prepared in writing by the appropriate system, program, project, or case manager, or by a knowledgeable authorized classifier.

§ 17.26 Classification guide components.

Classification guides shall:

(a) Identify the information elements to be protected, using categorization and subcategorization to the extent necessary to insure that the information involved can be readily and uniformly identified.

(b) State which of the classification designations, i.e., Top Secret, Secret, or Confidential apply to the identified information.

(c) State the duration of each such specified classification in terms of a period of time or future event. When such duration is to exceed six years, the specific reason for prolonging classification beyond the six-year period shall be provided in the guidance in accordance with the provisions of § 17.19(b) of this regulation. A specific reference to the pertinent portion(s) of § 17.19(b) of this regulation will suffice to meet the requirement of this Subsection concerning the recording of the reason(s) for extension of classification.

§ 17.27 Classification guide approval.

Each classification guide shall be approved and signed by an official with original Top Secret classification authority within the Department element with primary responsibility for guide preparation. The identity of this official will be shown on the guide. Such approval constitutes an original classification decision.

§ 17.28 Review of classification guides.

Classification guides shall be reviewed for currency and accuracy not less than once a year. Changes shall be in strict conformance with the provisions of this regulation and shall be issued promptly. If no changes are made, the originator or his representative shall so annotate the record copy and show the date of the review. A listing of all Department classification guides in use shall be maintained by the Department Security Officer.

§ 17.29 Emergency classification.

(a) If a person not authorized to classify National Security Information within the Department originates or develops information which requires immediate classification and safeguarding and no authorized classifier is available, that person shall:

(1) Safeguard the information in the manner prescribed for the intended classification.

(2) Mark the information (or cover sheet if applicable) with the appropriate classification.

(b) When designating information as classified with such security classification markings, the requirements pertaining to overall classification markings contained in this regulation shall be followed.

§ 17.30 · Final classification.

(a) Classified information which is marked with a classification not assigned by an authorized classifier shall be forwarded to an appropriate Department classifying authority for evaluation and decision concerning final classification action. Forwarding of such information to an authorized classifier for final classification shall be accomplished as soon as possible but no more than five working days from the time of initial classification. Upon any decision by the classifying authority to maintain the classification, appropriate markings shall be applied as prescribed in Subpart D.

(b) If a Department original classifying authority is not readily identifiable, the material shall be forwarded to the appropriate Security Programs Manager for action.

§ 17.31 Emergency action.

If an emergency requires immediate communication of information believed to require classification, after taking the action prescribed in § 17.29, such information may be transmitted; however the procedures contained in § 17.30 should then be followed. Care shall be taken that the security clearance of the person to whom the classified material or information is being transmitted is correspondent to or higher than the initial classification, in accordance with the provisions of Subpart G of this regulation. Additionally, the means of transmission shall be commensurate with the level of the initial classification, as prescribed in Subpart G.

§ 17.32 Raising to higher level of classification.

The upgrading of classified information to a higher level than previously determined, by officials with appropriate authority, is permitted only when all known holders of the information can be notified promptly.

§ 17.33 Classification of previously unclassified information.

Unclassified information, once communicated as such, may be classified only when a classifying authority satisfies the requirements described for upgrading in § 17.32 and determines that control of the information has not been lost by public dissemination or access.

§ 17.34 Notification.

Prompt notification of all upgrading and unscheduled downgrading actions shall be provided to all known holders of the information.

Subpart C—Declassification and Downgrading

§ 17.35 Policy.

Declassification of information shall be given emphasis comparable to that accorded classification. Information classified pursuant to Executive Order No. 12065 and prior orders shall be declassified as early as national security considerations permit. Decisions concerning declassification shall be based on the loss of sensitivity of the information with the passage of time or on the occurrence of an event which permits declassification. When information is reviewed for declassification pursuant to this regulation or the Freedom of Information Act, it shall be declassified unless the declassification authority established pursuant to § 17.36 determines that the information continues to meet the classification criteria requirements prescribed in § 17.18 despite the passage of time.

§ 17.36 Authority.

(a) Authority to declassify and downgrade information classified under the provisions of this or prior Orders shall be exercised as follows:

(1) By the Attorney General and the heads of the Offices, Boards, Divisions or Bureaus, with respect to all information over which their respective components exercise classification authority.

(2) By the official who authorized the original classification, if that official is still serving in the same position, by a successor, or by a supervisory official of either.

(3) By other officials designated for the purpose in accordance with § 17.36(b).

(b) The Attorney General shall designate additional officials at the lowest practicable echelons of supervision to exercise declassification and downgrading authority over classified information in their functional areas of responsibility. A list of officials so designated is to be maintained by the Department Security Officer in the same manner as is prescribed for records of designations of original classification authority. The Department Security Officer will ensure that all declassification and downgrading officials are knowledgeable of basic classification/declassification principles.

§ 17.37 Balancing test.

(a) It is presumed that information which continues to meet the classification criteria and requirements described in Subpart B requires continued protection. In some cases, however, the need to protect such information may be outweighed by the public interest in disclosure of that information and in these cases the information should be declassified. When such questions arise, the Attorney General or the head of the Office, Board, Division or Bureau concerned possessing Top Secret classifying authority (or his designee who also must possess such authority), shall determine whether the public interest in disclosure outweighs the damage to the national security that might be reasonably expected from disclosure and, if the determination is affirmative, declassify the information. The Security Programs Manager of the Office, Board, Division or Bureau concerned will establish internal procedures to ensure that these cases are referred to an appropriate reviewing official.

(b) When determining whether the public interest in disclosure outweighs the damage to the national security that might be reasonably expected from disclosure, the head of the Office, Board, Division or Bureau concerned should consider whether there exist any special circumstances so that the disclosure of the information would result in identifiable and significant benefit to the public. Such could include:

(1) Saving of human life;

(2) Avoidance of hostilities between sovereign powers;

(3) Accurate and appropriate public analysis of issues of national importance.

§ 17.38 Declassification by the Director of the Information Security Oversight Office.

If the Director of the Information Security Oversight Office determines that Department information is classified in violation of Executive Order No. 12065, the Director may require the information to be declassified by the Department. Any such decision by the Director may be appealed to the National Security Council, through the Department Review Committee. The information shall remain classified until the appeal is decided or until one year from the date of the determination by the Director of the Information Security Oversight Office, whichever occurs first.

§ 17.39 Systematic review for declassification.

Except for Foreign Government Information as provided in Subpart F, classified information constituting permanently valuable records of the Department as defined by 44 U.S.C. 2103, and information in the possession and under control of the Administrator of General Services pursuant to 44 U.S.C. 2107, shall be reviewed for declassification as it becomes 20 years old. Transition to systematic review at 20 years shall be implemented as rapidly as practicable and shall be completed by December 1, 1988.

§ 17.40 Classification extension beyond 20 years.

(a) The Attorney General may extend classification of information over which he exercises classification jurisdiction beyond 20 years using the procedures outlined in § 17.43. When classification is extended beyond 20 years, a date no more than 10 years later will be set for declassification or the next review. That date and the action specified shall be marked on the document. Subsequent reviews for declassification shall be set at no more than 10 year intervals, except as provided in § 17.40(b).

(b) Only the Director of the Information Security Oversight Office may extend the period between subsequent reviews for specific categories of documents or information beyond 10 years. A request for such extension shall be submitted through the Chairman, Department Review Committee to the Attorney General and shall include:

(1) A personal certification by the Attorney General that the classified information for which the waiver is sought was systematically reviewed as required;

(2) A statement that a date for declassification could not be determined; and

(3) Results of the review which establishes an identifiable need to retain classification for a period in excess of 20 additional years and a recommendation concerning the interval before the next required review.

§ 17.41 Systematic review assistance.

When requested by the National Archives and Records Service, the Attorney General shall designate experienced personnel to assist the Archivist of the United States in the systematic review of 20 year old United States originated information and 30 year old Foreign Government Information. The Department Security Officer may recommend the appropriate qualified personnel who shall:

(a) Provide guidance and assistance to National Archives employees in identifying and separating documents and specific categories of information within documents that are deemed to require continued classification; and

(b) Develop and submit through the Department Review Committee to the Attorney General recommendations for continued classification that identify documents or specific categories of information so separated.

§ 17.42 Systematic review guidelines.

(a) The Attorney General shall, after consultation with the Archivist of the United States and review by the Information Security Oversight Office, issue and maintain guidelines for systematic review covering 20 year old classified information under the Department's jurisdiction. (See also Subpart F, Foreign Government Information.) These guidelines shall state limited categories of information which, because of their national security sensitivity, should not be declassified automatically but should be reviewed, item by item, to determine whether continued protection beyond 20 years is needed.

(b) The Department Security Officer shall coordinate with Security Programs Managers and appropriate records management personnel within the Department in the development of guidelines for systematic review and shall submit such guidelines to the Attorney General for approval. The guidelines for systematic review shall, once approved and issued, be kept current through review by the Department Security Officer and the Security Programs Managers at least every two years and revised as necessary, unless earlier review for revision is requested by the Archivist of the United States. Copies of systematic review guidelines and changes thereto promulgated by the Department shall be provided to the Information Security Oversight Office. All unclassified guidelines for systematic review will be published in the FEDERAL REGISTER.

(c) All systematic review guidelines shall be authorized for use by the Archivist of the United States and may, upon approval of the Attorney General, be used by any other federal agency having custody of the information. All such information, except Foreign Government Information, not identified in these guidelines as requiring review and for which a prior automatic declassification date has not been established, shall be automatically declassified at the end of 20 years from the date of original classification.

§ 17.43 Systematic review procedures.

(a) Only permanently valuable records shall be subjected to systematic review for declassification. Classified nonpermanent records that are scheduled to be retained for more than 20 years need not be systematically reviewed, but shall be reviewed for declassification upon request.

(b) The Attorney General, through the Department Security Officer, shall direct that all such classified records 20 years old or older, whether held in storage areas under Department control or in Federal Records Centers, be surveyed to identify those that require scheduling for future disposition. If possible such scheduling should be accomplished by December 1, 1980. The Security Programs Managers and Records Management Officials shall coordinate this effort with the Department Security Officer and Department Records Management Officials, respectively.

(c) All Department information and material accessioned into the National Archives and Records Service that is permanently valuable and more than 20 years old is to be systematically reviewed for declassification by the Archivist of the United States (using the guidelines issued pursuant to § 17.42(c)) with the assistance of the Department's personnel designated for that purpose pursuant to § 17.41. The Archivist shall refer to the appropriate Security Programs Manager such information and material as has been indicated by the Department guidelines as requiring further review. The Security Programs Manager shall cause a review to be conducted by a knowledgeable Top Secret classifying authority in the Office, Board, Division or Bureau concerned. The Security Programs Manager shall also cause such review to be conducted in cases involving 20 year old information and material in the custody of the Office, Board, Division or Bureau concerned. Security Programs Managers within the Office, Board, Division or Bureau with primary jurisdiction over the classified information or material either received from the Archivist or in the Office, Board, Division or Bureau's custody, shall proceed as follows:

(1) Classified information or material over which the Office, Board, Division or Bureau exercises exclusive or final original classification authority and which, in accordance with the systematic review guidelines developed under § 17.42, is to be declassified, shall be marked and handled as such.

(2) Classified information or material over which the Office, Board, Division or Bureau exercises exclusive or final original classification authority and which the head of such organization recommends should be kept pro-

tected, shall be identified under appropriate category headings. Such information shall then be referred by the head of the Office, Board, Division or Bureau concerned through the Department Review Committee (for further review and recommendation) to the Attorney General. This recommendation shall:

(i) Identify the specific categories of classified information or material involved.

(ii) Recommend classification beyond 20 years to a specific future event scheduled to happen or for a specific period of time not to exceed 10 years or, in the alternative, recommend a subsequent review date not to exceed 10 years.

(iii) State the reason for the recommended continued classification.

(d) The Attorney General shall personally consider and determine which category of information and material shall be kept classified and the dates for automatic declassification or subsequent review. When the Attorney General makes a determination that National Security Information requires continued classification beyond 20 years under this subpart, such extension of classification shall begin from the date of the Attorney General's decision. The Archivist of the United States will be notified in writing of this decision.

§ 17.44 Mandatory review for declassification.

All classified information, upon request by a member of the public or a Government employee or agency to declassify and release such information under the provisions of Executive Order No. 12065, shall be subject to mandatory review by the originating Office, Board, Division or Bureau for possible declassification in accordance with the procedures of this Subpart. Requests for declassification under this provision shall be acted upon within 60 days.

§ 17.45 Mandatory review for Presidential Papers.

(a) Information less than 10 years old which was originated by the President, by the White House Staff, or by committees or commissions appointed by the President, or by others acting on behalf of the President, is exempted from mandatory review for declassification.

(b) Such information 10 years old or older is subject to mandatory review for declassification in accordance with procedures developed by the Archivist of the United States which shall provide for consultation with the Department in matters of primary subject interest to this Department.

§ 17.46 Submission of requests for mandatory review.

Requests for mandatory review of classified information shall be submitted in accordance with the following:

(a) Requests for mandatory declassification review under this Subpart shall be submitted to the Director, Office of Privacy and Information Appeals, 10th and Constitution Avenue, Washington, D.C. 20530. The Office of Privacy and Information Appeals shall promptly forward such requests to the Office, Board, Division or Bureau concerned provided:

(1) A department (any agency of the Government or other governmental unit) or employee thereof, or a member of the public requests the review.

(2) The request is in writing and reasonably describes the classified information or material with sufficient particularity to enable the Department to identify it.

(3) The classified information or material can be located with a reasonable amount of effort.

(b) When the description in a request is deficient, the requester should be asked to provide as much additional identifying information as possible. Before denying a request on the basis that the information or material is not obtainable with a reasonable amount of effort, the requester should also be asked to limit his request to information or material that is reasonably obtainable. If the requester then fails to describe the information or material he seeks with sufficient particularity, or if it cannot be obtained with a reasonable amount of effort, the requester shall be notified of the reasons why no action will be taken and of his right to appeal the decision to the Department Review Committee.

(c) The Office of Privacy and Information Appeals shall assign the request to the appropriate Office, Board, Division or Bureau within the Department for action, and shall immediately acknowledge receipt of the request to the requester in writing. The Office, Board, Division or Bureau concerned shall thereafter make a determination within 30 days of receipt of the request or shall explain to the requester the reasons why further time is necessary (including where consultation with other agencies is required pursuant to § 17.52(b)). If at the end of 60 days from receipt of the request for review no determination has been made, the requester may apply to the Department Review Committee for a determination.

(d) If the Office, Board, Division or Bureau determines that continued classification is required, the requester shall promptly be notified, and, whenever possible, provided with a brief statement as to why the requested information or material cannot be declassified. The requester may appeal any such determination to the Department Review Committee and the notice of determination shall advise him of this right. If, after appeal by the requester, the Department Review Committee determines that continued classification is required, it shall promptly so notify the requester.

(e) In making its determinations concerning requests for declassification of classified information or material, the Department Review Committee shall impose, for administrative purposes, the burden of proof on the originating Office, Board, Division or Bureau to show that continued classification is warranted.

(f) After review, the information or any reasonably segregable portion thereof that no longer requires protection under this regulation shall be declassified and released to the requester unless withholding is otherwise warranted under applicable law. If the information, although declassified, is withheld, the requester shall be given a brief statement as to the reasons for denial, a notice of the right to appeal the determination to the Office of Privacy and Information Appeals, 10th and Constitution Avenue, Washington, D.C. 20530, and a notice that such an appeal must be filed with the agency within 60 days in order to be considered.

(g) Requests for declassification which are submitted under the provisions of the Freedom of Information Act shall be processed in accordance with the provisions of that Act.

§ 17.47 Information classified by agencies other than the department subject to mandatory review.

When the Office, Board, Division or Bureau receives a request from the Office of Privacy and Information Appeals for information in Department custody that involves information classified by another agency, it shall forward a copy of the request to the appropriate agency for review, together with a copy of the document containing the information requested, where practicable, along with its recommendation to withhold any of the information, where appropriate. Unless the agency that classified the information objects on grounds that its association with the information requires protection, the Office, Board, Division or Bureau shall also notify the requester of the referral. After the agency that classified the information completes its review (in coordination with other agencies that have a direct interest in the subject matter) a response shall be sent by the classifying agency to the requester in accordance with § 17.46. If requested, the agency shall also communicate its determination to the Office, Board, Division or Bureau.

§ 17.48 Mandatory review appeal.

The Director, Office of Privacy and Information Appeals shall establish detailed procedures to insure action within 30 days upon all appeals of denials of requests for declassification. These procedures shall provide for meaningful appellate consideration by the Department Review Committee, shall be forwarded to the Information Security Oversight Office for review, and shall be published in the FEDERAL REGISTER. In accordance with these procedures, the Department shall determine whether continued classification is required in whole or in part, notify the requester of the determination, and make available any information that is declassified and otherwise releasable. If continued classification is required under the provisions of Section 3-3 of Executive Order No. 12065, the requester shall be notified of the reasons therefor. If requested, the Department shall also communicate the appeal determination to any referring agency.

§ 17.49 Fees.

If the request requires the rendering of services for which fair and equitable fees may be charged pursuant to 31 U.S.C. 483a, such fees may be imposed at the discretion of the Office of Privacy and Information Appeals, Office of the Associate Attorney General, in accordance with the schedule set forth in 28 CFR 16.9(b).

§ 17.50 Prohibitions.

No Office, Board, Division or Bureau in possession of classified information may, in response to a request for the document under this Subpart, refuse to confirm the existence or nonexistence of the document unless the fact of its existence or nonexistence would itself be classifiable under this regulation.

§ 17.51 Material officially transferred.

In the case of classified information or material transferred by or pursuant to statute or Executive Order from one department or agency to another in conjunction with a transfer of functions (as distinguished from transfers merely for the purpose of storage) the receiving department or agency shall be deemed to be the original classifying authority over such material for purposes of downgrading and declassification.

§ 17.52 Material not officially transferred.

(a) When any Office, Board, Division or Bureau of the Department has in its possession any classified information or material originated in an agency or department outside of the Department, which has since ceased to exist, and whose files and other property have not been officially transferred to another agency or department within the meaning of § 17.51, the head of the Office, Board, Division or Bureau (or his designee) with custodial jurisdiction over the information shall have the authority to declassify or downgrade such information. Further, if it is impossible for the possessing Office, Board, Division or Bureau of the Department to identify the originating agency, and a review of the material indicates that the classified information contained therein should be downgraded or declassified, the head of the Office, Board, Division or Bureau concerned (or his designee) shall have the authority to declassify or downgrade such classified information.

(b) If it appears probable that another department or agency may have a substantial interest in whether the classification of any particular information should be maintained, the possessing Office, Board, Division or Bureau within the Department shall not exercise the declassification authority discussed in § 17.52(a), except with the consent or consultation of the other department or agency, until 60 days after the Office, Board, Division or Bureau concerned has notified in writing, such other department or agency of the nature of the information and of its intention to downgrade or declassify the information concerned. During such a 60 day period, the other department or agency may, if it so desires, express its objections to downgrading or declassifying the particular information; however the authority to make the ultimate decision shall reside with the head of the possessing Office, Board, Division or Bureau (or his designee).

(c) Classification guidance may be sought from appropriate officials of the Office, Board, Division or Bureau concerned, from the Department Security Officer or from the Department Review Committee, in such instances, as described in this Subpart. In cases of conflict, the Department Review Committee shall be the resolving authority.

§ 17.53 Information transferred for storage or retirement.

Insofar as practicable, documents containing classified information shall be reviewed to determine whether or not such information can be downgraded or declassified prior to being forwarded to the Archives of the United States for permanent preservation. When this is accomplished, certification of classification review shall be entered on or affixed to the transmittal form or on the document itself by an authorized classifying or declassifying official. Appropriate markings reflecting downgrading or declassification shall also be indicated, pursuant to § 17.73, on each document reviewed. Classified information transferred to the General Services Administration for accession into the Archives of the United States shall be downgraded or declassified by the Archivist of the United States in accordance with Executive Order No. 12065, the directives of the Information Security Oversight Office, and Department guidelines.

§ 17.54 Automatic downgrading.

Classified information that is marked for automatic downgrading is downgraded accordingly without notification to holders.

§ 17.55 Downgrading upon reconsideration.

Classified information that is not marked for automatic downgrading may be assigned a lower classification designation by the originator or by an official authorized to declassify the same information (see § 17.36). Notice of downgrading shall be provided to known holders of the information to the extent practicable.

§ 17.56 Notification of changes in classification or declassification.

When documents containing classified information have been properly marked with specific dates or events for declassification, it is not necessary to issue notices of declassification to any holders. However, when declassification action is taken earlier than originally scheduled, the authority making such changes shall ensure prompt notification to all addressees to whom the information or material was originally transmitted. The notification shall specify the marking action to be taken, the authority therefor and the effective date. Upon receipt of notification, recipients shall effect the proper changes and shall notify addressees to whom, in turn, they have transmitted the classified information or material.

§ 17.57 Foreign relations series.

In order to permit the Department of State editors of the publication "Foreign Relations of the United States" to meet their mandated goal of publishing appropriate Government information 20 years after a particular event, all Offices, Boards, Divisions and Bureaus shall assist such editors by facilitating access to applicable classified information in their custody and by expediting declassification review of items from their files selected for publication.

Subpart D—Identification and Marking

§ 17.58 Policy.

Information determined to require classification protection under the provisions of this regulation shall be so designated. Designation by means other than physical markings may be used but shall be followed by physical marking as soon as possible.

§ 17.59 Marking documents (General).

(a) At the time of original classification, the following shall be shown on the face of paper copies of originally classified documents:

(1) The identity of the original classification authority, unless he or she is the signer or approver of the document;

(2) The date of classification and office of origin. The document date and office of origin may be considered the date of classification and identification of the office of origin;

(3) The date or event for automatic declassification or for review for declassification;

(4) The identity of the extension authority and reason for extension. Documents classified for more than six years shall also be marked with the

identity of the TOP SECRET classification authority who authorized prolonged classification, unless that official also is the signer or approver, and annotated with the reasons the classification is expected to remain necessary despite the passage of time. The reasons may be stated by reference to the appropriate criteria listed in § 17.19(b) of this regulation;

(5) Any downgrading markings or action to be taken and the date thereof;

(6) The classification of the subject or title, if any;

(7) The overall classification of the document;

(8) The level of classification of each paragraph.

(b) At the time of origin, paper copies of derivatively classified documents shall show on their face:

(1) The source of classification, i.e., a source document(s) or classification guide. If classification is derived from more than one source, the phrase "multiple sources" will be shown and the identification of each source will be maintained with the file or record copy of the document;

(2) The identity of the office within the Department originating the derivatively classified document;

(3) The classification of the individual paragraphs and the overall classification of the document;

(4) The date or event for automatic declassification or for review for declassification, which shall be carried forward from the source material or classification guide. If the classification is derived from multiple sources, the latest date or event for declassification or review applicable to the various source documents shall be applied to the new document, unless that date is more than 20 years later, in which case the new document shall be marked for declassification or review on the twentieth anniversary of the latest original classification of the source documents.

(c) In addition to the foregoing, paper copies of classified documents shall be marked as prescribed in this Subpart or in Subpart F if the document contains Foreign Government Information. Such notations shall be carried forward from source documents to derivatively classified documents when appropriate.

(d) To the extent practical, material other than paper copies of documents shall show the foregoing on the material itself or in related or accompanying documentation.

§ 17.60 Marking the document with the identity of classifier.

(a) Identification of a classification authority shall be shown on the "Classified by" line prescribed under § 17.73 and shall be such that, standing alone, it is sufficient to identify a particular official, source document or classification guide.

(1) If any information in a document or material is classified as an act of original classification, the classification authority who made the determination shall be identified on the "Classified by" line, unless the classifier is also the signer or approver of the document.

(2) If the classification of all information in a document or material is derived from a single source (for example, a source document or classification guide), the "Classified by" line shall identify the source of original classification or classification guide, including its date.

(3) If the classification of information contained in a document or material is derived from more than one source document, classification guide, or combination thereof, the "Classified by" line shall be marked "multiple sources" and identification of all such sources shall be maintained with the file or record copy of the document.

(4) If an official with requisite classification authority has been designated by the head of an Office, Board, Division or Bureau to approve security classifications assigned to all information leaving that component, the name and title of that designated official shall be shown on the "Classified by" line. The designated official shall maintain records adequate to support derivative classification actions.

(5) If the identification of the classifier in itself is classified information, a substitute identifier can be used provided that adequate records are main-

tained by the classifying organization to identify the classifier by name, if necessary.

(b) Guidance concerning the identification of the classification authority on electronically transmitted messages is contained in § 17.67.

§ 17.61 Overall and page marking.

Except as otherwise specified for working papers, the overall classification of a document, whether or not permanently bound, or any copy or reproduction thereof, shall be conspicuously marked, stamped or affixed permanently at the top and bottom on the outside of the front cover (if any), on the title page (if any), on the first page, and on the outside of the back cover (if any). Each interior page shall be marked on the top and bottom according to its content, including the designation "UNCLASSIFIED" when appropriate. Alternatively, the overall classification of the document may be conspicously marked or stamped at the top and bottom of each interior page (regardless of the actual classification of the information contained on that page) when such marking is necessary to achieve reproduction efficiency and the particular information to which classification is assigned is otherwise sufficiently identified consistent with the intent of § 17.63. In any case, the overall classification marking of a page shall not take the place of the classification marking of portions of the page marked with lower levels of classification.

§ 17.62 Marking components of documents.

When major components of complex documents are likely to be used separately, each major component shall be marked as a separate document. Examples include: (a) Each annex, appendix, or similar component of a plan or program; (b) attachments and appendices to a memorandum or letter; (c) each major part of a report.

§ 17.63 Paragraph or portion marking.

(a) Each section, part or paragraph, of a classified document shall be marked to show the level of classification of the information contained in or revealed by it, or that it is unclassified. Portions of documents shall be marked in a manner that eliminates doubt as to which of its portions contains or reveals classified information. Classification levels of paragraphs or portions of a document shall be shown by placing a parenthetical designator immediately preceding or following the text that it governs. In marking sections, parts, paragraphs, subparagraphs, or similar portions, the parenthetical designators "(TS)" for Top Secret, "(S)" for Secret, "(C)" for Confidential, and "(U)" for Unclassified, shall be used. When appropriate, the symbols "RD" for Restricted Data and "FRD" for Formerly Restricted Data shall be added, e.g., "(S-RD)" or "(C-FRD)". In addition, portions that contain Critical Nuclear Weapon Design Information will be marked "CNWDI" following the classification.

(b) Illustrations, photographs, figures, graphs, drawings, charts and similar portions of classified documents will be clearly marked to show their classification or unclassified status. Such markings shall not be abbreviated and shall be prominent and placed within or contiguous to the portion. Captions of such portions shall be marked on the basis of their content alone, by placing the symbol "(TS)," "(S)," "(C)," or "(U)," immediately preceding the caption.

(c) If in an exceptional situation, the parenthetical portion marking is determined to be impracticable, the document shall contain a statement sufficient to identify the information that is classified and the level of such classification. Thus, for example, each portion or paragraph of a classified document need not be separately marked if all portions or paragraphs are classified at the same level, provided a statement to that effect is included in the document.

(d) When elements of information in one portion require different classifications, but segregation into separate portions would destroy continuity or context, the highest classification required for any item shall be applied to that portion or paragraph.

(e) The Director of the Information Security Oversight Office may, for good cause, grant and revoke waivers of the foregoing portion marking requirements. Requests for a waiver of portion marking requirements shall be submitted to the Department Security Officer from the Security Programs Managers and shall include the following: (1) Identification of the information or class of documents for which such waiver is sought; (2) a detailed explanation of why the waiver should be granted; (3) the Office's, Board's, Division's or Bureau's judgment as to the anticipated dissemination of the information or class of documents for which the waiver is sought; and (4) the extent to which such information subject to the waiver may be a basis for derivative classification in future documents.

§ 17.64 Subjects and titles of documents.

Classified subjects or titles of documents shall be marked with the appropriate symbol, "(TS)," "(S)," "(C)," or "(U)," and shall be placed immediately to the right of such subjects or titles. When applicable, other appropriate symbols, e.g., "(RD)" and "(FRD)," shall be added. Every effort should be made to use unclassified titles or subjects.

§ 17.65 Files, folders, or groups of documents.

Files, folders or groups of documents shall be marked conspicuously according to the highest classification of any classified document included therein. Document cover sheets may be used for this purpose.

§ 17.66 Transmittal documents.

A transmittal document shall carry on its face a prominent notation as to the highest classification of the information transmitted with it and a legend showing the classification, if any, of the transmittal document standing alone. For example, an unclassified document that transmits an attachment classified SECRET shall bear a notation substantially as follows: "UNCLASSIFIED WHEN SEPARATED FROM SECRET FNCLOSURE."

§ 17.67 Messages.

It is recognized that marking some electronically transmitted classified messages poses serious technical problems, requiring certain exceptions. However, every reasonable effort shall be made to mark such messages consistent with the provisions of this Subpart.

§ 17.68 Translations.

Translations of United States classified information into a language other than English shall be marked to show the United States as the country of origin, with the appropriate United States classification markings and the foreign language equivalent thereof.

§ 17.69 Markings on special categories of material.

Security classification and declassification instructions assigned by the classifier shall be conspiciously stamped, printed, written, painted, or affixed by means of a tag, sticker, decal or similar device, on classified material other than paper copies of documents, and on containers of such material, if possible. If marking the material or container is not practicable, written notification of the security classification and declassification instructions shall be furnished to recipients. The following procedures for marking various kinds of material containing classified information are not all inclusive and may be varied to accommodate the physical characteristics of the material containing the classified information as well as organizational and operational requirements.

§ 17.70 Charts, maps and drawings.

Charts, maps and drawings shall bear the appropriate classification marking under the legend, title block or scale, in a manner that differentiates between the overall classification of the document and the classification of the legend or title itself. The higher of these markings shall be inscribed at the top and bottom of each such document. If folding or rolling charts, maps or drawings would cover the classification markings, additional markings shall be applied that are clearly visible when the document is folded or rolled.

§ 17.71 Photographs, films and recordings.

Photographs, films (including negatives), recordings, and their containers shall be marked in such a manner as to assure that a recipient or viewer will know that classified information of a specified level of classification is involved.

§ 17.72 Applying derivative declassification markings.

(a) New material that derives its classification from information classified on or after December 1, 1978 shall be marked with the declassification date, event, or date for review assigned to the source information.

(b) New material that derives its classification from information classified prior to December 1, 1978, shall be treated as follows:

(1) If the source material bears a declassification date or event not more than 20 years from the date of origin, the date or event shall be carried forward to the new material;

(2) If the source material bears no declassification date or event, or bears an indeterminate date or event such as "Upon Notification by Originator," "Cannot Be Determined," "Impossible to Determine," etc., or is marked for declassification beyond 20 years from date of origin, the new material shall be marked with a date for review for declassification at 20 years from the date of original classification of the source material; and

(3) If the source material is Foreign Government Information bearing no date or event for declassification or is marked for declassification beyond 30 years from date or origin, the new material shall be marked for review for declassification at 30 years from the time the information was originated by the foreign government or international organization of governments, or acquired or classified by the Department, whichever is earlier.

§ 17.73 Examples of commonly used markings.

At the time of origin, each classified document is marked on its face with one or more standard markings substantially as follows:

(a) Original Classification Not to Continue More than Six Years. The following markings are used with an original classification that will not continue beyond six years (§ 17.59(a)):

Classified by: (Classification Authority)
Declassify on: (Date or Event)
Message Abbreviation: DECL (Date or Event)

(b) Original Classification to Continue More than 6 Years but Not in Excess of 20 Years. The following markings are used with an original classification that will continue beyond 6 years but not in excess of 20 years (see § 17.59(a) for additional applicable markings):

Classified by: (Classification Authority)
Declassify on: (Date or Event)
Or Review for Declassification on: (Date 6-20 yrs from origin)
Extended by: (Top Secret Authority)
Reason: (a)(b)(c) or (d)
Message Abbreviations:
DECL (Date)
Or REVW (Date)
REAS (a)(b)(c) or (d)

(c) *Derivative Classification.* The following markings are used with a derivative classification (see § 17.59(b) for additional applicable markings):

Classified by: (Guide or Source Document)
Derivative Classification Applied by: (Identity of individual by name and office)
Declassify on: (Date carried forward)
Or Review on: (Date carried forward)
Message Abbreviations:
DECL (Date Carried Forward)
Or REVW (Date Carried Forward)

(d) *Downgrading.* The following marking is used to specify a downgrading (see § 17.59 (a) and (b) for additional applicable markings):

Downgrade to: (Classification) on (Date)
Message Abbreviation DG/(S)/ (6 June 84)

(e) The Restricted Data and Formerly Restricted Data markings (see § 17.77 and § 17.78) are, in themselves, evidence of extended classification. Therefore, except for electronically transmitted messages, only a completed "classified by" line is required with such a marking.

§ 17.74 Upgrading.

When material is upgraded it shall be promptly and conspicuously marked, except that in all such cases the old classification markings shall be cancelled and new markings substituted therefor.

§ 17.75 Limited use of posted notice for large quantities of material.

(a) When the volume of material is such that prompt remarking of each classified item cannot be accomplished without unduly interfering with operations, the custodian may attach upgrading, downgrading or declassification notices to the storage unit. Each notice shall specify the authority for the classification action, the date of the action, and the storage unit to which it applies.

(b) When individual documents or materials are permanently withdrawn from storage units, they shall be remarked promptly. However, when documents or materials subject to a downgrading or declassification notice are withdrawn from one storage unit solely for transfer to another, or a storage unit containing such documents or materials is transferred from one place to another, the transfer may be made without remarking if the notice is attached to or remains with each shipment. Items permanently withdrawn from such storage units shall be promptly remarked in accordance with this Subpart.

§ 17.76 Additional warning notices.

(a) In addition to the marking requirements prescribed in § 17.59, warning notices shall be prominently displayed on classified documents or materials, when applicable. In the case of documents, these warning notices shall be marked conspicuously on the outside of the front cover, or on the first page, if there is no front cover.

(b) When display of warning notices on other materials is not possible, their applicability to the information shall be included in the written notification of the assigned classification.

§ 17.77 Restricted data.

Classified documents or material containing Restricted Data as defined in the Atomic Energy Act of 1954, as amended, shall be marked as follows on the bottom of each page:

"RESTRICTED DATA

This document contains Restricted Data as defined in the Atomic Energy Act of 1954. Unauthorized disclosure subject to Administrative and Criminal Sanctions."

§ 17.78 Formerly restricted data.

Classified documents or material containing Formerly Restricted Data, as defined in Section 142.d, Atomic Energy Act of 1954, as amended, but no Restricted Data, shall be marked as follows on the bottom of each page:

"FORMERLY RESTRICTED DATA

Unauthorized disclosure subject to Administrative and Criminal Sanctions. Handle as Restricted Data in Foreign Dissemination, Section 144.b, Atomic Energy Act, 1954, 42 U.S.C. 2011 et seq."

§ 17.79 Intelligence sources and methods information.

Classified information or material involving intelligence sources and methods and subject to specific dissemination controls shall be marked with the following additional warning notice:

"WARNING NOTICE—Intelligence Sources and Methods Involved."

§ 17.80 Dissemination and reproduction notice.

Classified information that is determined by a Department originator to be subject to special dissemination or reproduction limitations, or both, shall include, an appropriate statement(s) on its cover sheet, first page or in the text, substantially as follows:

"Reproduction requires approval of originator or higher Department of Justice authority."

"Further dissemination only as directed by (Insert appropriate office or official) or higher Department of Justice authority."

§ 17.81 Remarking old material.

Documents and material already marked under Executive Order 11652, as amended, or predecessor orders and directives shall be remarked in conformity with this subpart when: (a) The document or material itself is to be disseminated outside the Department, or (b) the document or material is reviewed by the Office, Board, Division or Bureau concerned for specific purposes under Subpart C. When such document or material is withdrawn temporarily from files or storage merely for reference purposes, or for transfer to other files or storage within the same activity, it need not be remarked. Whenever remarking of such documents or material is required, it shall be accomplished in accordance with this subpart.

§ 17.82 Remarking documents or material marked "Subject to the General Declassification Schedule" or "Advanced Declassification Schedule".

A document or material, classified prior to December 1, 1978 and marked for automatic declassification in accordance with the General Declassification Schedule or an Advanced Declassification Schedule under Executive Order 11652 need not be remarked. However, should a determination be made under Subpart B to extend classification beyond the declassification date or event specified by the General Declassification Schedule or an Advanced Declassification Schedule, the document or material shall be remarked in accordance with this subpart.

§ 17.83 Remarking documents or material marked as "Exempt from the General Declassification Schedule" or not marked with any declassification instructions.

A document or material classified before December 1, 1978 and marked as exempt from the General Declassification Schedule under Executive Order 11652 with a date or event for declassification 20 years or less from the date of origin, shall not be remarked. However, if a document or material exempted from the General Declassification Schedule is marked with a declassification date in excess of 20 years from the date of origin or does not bear a specific declassification date or event, it shall be marked with a date for review for declassification at 20 years from the date of origin of the document, e.g., "Review on (insert date)."

§ 17.84 Remarking documents or material marked Group 4.

(a) Information classified under Executive Order 10501, as amended, that is contained in a document or material marked as Group 4 and still so marked, was redesignated by Executive Order 11652 under the General Declassification Schedule and became subject to automatic declassification thereunder as follows:

(1) All such information originally classified as Top Secret becomes downgraded at two year intervals and is declassified on December 31 of the tenth year from the year of origin or December 31, 1982, whichever is earlier;

(2) All such information originally classified as Secret becomes downgraded after two years and declassified on December 31 of the eighth year from the year of origin or December 31, 1980, whichever is earlier; and

(3) All such information originally classified as Confidential should have become declassified on December 31, 1978.

(b) When such information is determined to have been automatically declassified under paragraph (a) (1), (2), or (3) of this section , remarking of a document or material is not necessary but old classification markings shall be canceled on at least the first page. In cases where such information remains classified under paragraph (a) (1), (2), or (3) of this section, a finite date for declassification shall be shown on a "declassify on" line; prior classification markings shall be canceled on at least the first page, and current classification designations substituted therefor. However, should a determination be made under Subpart B to extend classification beyond the declassification date or event specified by the General Declassification Schedule, the document or material shall be remarked in accordance with this subpart. Such extension may be made only in accordance with § 17.19(c).

§ 17.85 Remarking documents or material marked Group 1, 2 or 3, or not group marked.

Information (not including Foreign Government Information) classified before June 1, 1972 that is contained in a document or material marked as Group 1, 2 or 3 under Executive Order 10501 as amended, or not group marked, shall be remarked to show a date for review for declassification 20 years from the date of origin, e.g., "review on (insert date)."

Subpart E—Safekeeping and Storage

§ 17.86 Policy.

(a) Classified information may be used, discussed, held, or stored only where there are facilities or under conditions adequate to prevent unauthorized persons from gaining access to it. The exact nature of security requirements will depend on a thorough security evaluation of local conditions and circumstances. Security requirements must permit the accomplishment of essential functions while affording selected items of information reasonable degrees of security with a minimum of risk. The requirements specified in this regulation represent the minimum acceptable standards.

(b) Funds, weapons, medical items, or other items of intrinsic value will not be stored in containers along with classified National Security Information. Likewise, combinations and keys to containers used to store such items will not be kept in security containers used to store classified information. This restriction does not apply to valuable items which are themselves classified.

§ 17.87 Standards for storage equipment.

The General Services Administration establishes and publishes minimum uniform standards, specifications, and supply schedues for containers, vaults, alarm systems and associated security devices suitable for storage and protection of classified information and material throughout the Government. Department Order 2620.4 entitled "Physical Security Manual for Safeguarding Classified National Security Information" contains information regarding acceptable security equipment for the physical protection of National Security Information within the Department. No other equipment to be used for the storage of classified National Security Information shall be procured without the prior approval of the Department Security Officer.

§ 17.88 Storage of classified material.

Whenever classified material is not under the personal control of an authorized and appropriately cleared person, whether during or outside of working hours, it will be guarded or stored in a locked security container as prescribed below:

(a) *Top Secret.* Top Secret information or material shall be stored in:

(1) A safe-type steel file container having a built-in, three position, dial-type combination lock approved by the General Services Administration or a vault or secure area which meets the standards as contained in Department Order 2620.4; or

(2) An alarmed area, provided such facilities are judged by the Department Security Officer to afford protection equal to or greater than that prescribed in § 17.88(a)(1). When an alarmed area is utilized for the storage of Top Secret information and material, the physical barrier must be adequate to prevent surreptitious removal of the material, and observation, when such observation would result in the compromise of the classified information. The physical barrier must also be such that attempted forcible entry will give evidence of such entry into the area or room. As a minimum the alarm system must provide for an immediate response by a security force to an attempted surreptitious or forced entry.

(b) *Secret and Confidential.* Secret and Confidential material may be stored in a manner authorized for Top Secret; or in a vault-type room, or secure storage room which has been approved in accordance with the standards prescribed in Department Order 2620.4, or until phased out, in containers described in § 17.88(d).

(c) *Specialized Security Equipment—* (1) *One and Two Drawer Containers.* One and two drawer security containers which are approved by the General Services Administration shall be used primarily in mobile facilities or in areas where small amounts of classified information is stored. Such containers should be securely fastened or guarded to prevent the theft of the container.

(2) *Map and Plan File.* A General Services Administration approved Map and Plan File container has been developed for storage of odd sized items such as computer cards and tapes, maps, charts, plans, and other classified material.

(d) *Non-General Services Administration Approved Containers.* In addition to the security containers meeting General Services Administration standards, Secret and Confidential classified information may be stored in a steel filing cabinet equipped with a built-in, three-position, dial-type combination lock; or as a last resort, in an existent steel filing cabinet equipped with a steel lock bar, provided it is secured by a General Services Administration approved changeable combination padlock.

(e) *Sensitive Compartmented Information Storage.* Sensitive Compartmented Information will be stored only in accredited facilities which meet approved physical security standards for such material pursuant to Director of Central Intelligence Directive 1/19 entitled "Uniform Procedures for Administrative Handling and Accountability of Sensitive Compartmented Information" and other applicable Department regulations. When maintained in Sensitive Compartmented Information facilities, classified information may be stored in the same container prescribed for storage of Sensitive Compartmented Information, however, when removed from the Sensitive Compartmented Information facility the provisions of § 17.88 (a) through (d), apply.

§ 17.89 Procurement and phase-in of new storage equipment.

Whenever new security storage equipment is procured, it will be from the security containers listed on the Federal Supply Schedule, General Services Administration. Further acquisition for unapproved security containers or modification of cabinets to bar-padlock type as storage equipment for classified information and material is prohibited. Exceptions may be made by the Department Security Officer, upon written request from the Security Programs Manager concerned.

§ 17.90 Designations of security containers.

There shall be no external marking as to the level of classified information authorized to be stored in a container. However, each vault, secure area or security container shall be assigned a number or symbol for the purpose of identifying what level or category of classified information is stored therein. The number or symbol shall be affixed in a conspicuous location on the outside of the vault or security container. Security Programs Managers shall keep a record of the vaults and security containers under their cognizance along with the designation of the level of classified information authorized to be stored therein.

§ 17.91 Changing combinations to security containers.

Combinations to security containers will be changed only by individuals having an appropriate security clearance and who have received instruction on how to correctly change such combinations. Combinations shall be changed:

(a) When the container is placed in use;

(b) When an individual knowing the combination no longer requires or is authorized access to classified information stored in the container;

(c) When the combination or record of combination has been subject to compromise;

(d) At least annually; and

(e) When taken out of service. At this time built-in combination locks shall be reset to the standard combination 50-25-50; combination padlocks shall be reset to the standard combination 10-20-30.

§ 17.92 Classification of combinations.

The combination of a vault or container used for the storage of classified information and material shall be assigned a security classification equal to the highest level of the classified material authorized to be stored therein. No downgrading/declassification instructions or classifier identity are required to be made when classifying records of combinations to security containers. Accordingly, classification actions for such combinations are not required to be reported.

§ 17.93 Recording stroage facility data.

A record shall be maintained by Security Programs Managers or their designees for each vault, secure area, or container used for the storage of classified information. The record shall show its location, and the names and other appropriate identifying data of persons having knowledge of the combinations to such storage facilities. General Services Adminstration Optional Form 63, entitled "Security Container Information" may be used within the Department for these purposes. The OF-63 containing security combinations shall be marked with the appropriate overall classification, and shall be safeguarded and stored in accordance with the protection afforded to that classification.

§ 17.94 Care during working hours.

Each individual shall take all necessary precautions to prevent access to classified information by unauthorized persons (i.e., persons who do not possess an appropriate security clearance, and who do not possess the required need-to-know). Among the precautions to be followed are:

(a) Classified documents, when removed from storage for working purposes, shall be kept under constant surveillance and turned face-down or covered when not in use. Use of legal and standard size Department Cover Sheets should be utilized to cover classified documents.

(b) Preliminary drafts, carbon sheets, plates, stencils, stenographic notes, worksheets, and all similar items containing classified information shall be either destroyed by the person responsible for their preparation immediately after they have served their purposes, or shall be given the same classification and safeguarded in the same manner as the classified information they contain.

(c) Typewriter ribbons used in typing classified information shall be protected in the same manner as the highest level of classification for which they have been so used. When destruction is necessary, it shall be accomplished in the manner prescribed for classified working papers (See Subpart H) of the same classification. After the upper and lower sections of the ribbon have been cycled through the typewriter five times in the course of regular typing, all fabric ribbons may be treated as unclassified. Carbon and plastic typewriter ribbons and carbon paper which have been used in the production of classified information shall be destroyed after initial usage in the manner prescribed for working papers of the same classification. As an exception to the foregoing, any typewriter ribbon which remains substantially stationary in the typewriter after it has received at least five consecutive impressions may be treated as unclassified.

§ 17.95 Care after working hours.

Heads of Offices, Boards, Divisions and Bureaus shall require and institute through their Security Programs Managers, a system of security checks at the close of each working day to ensure that the classified information in the possession of such Offices, Boards, Divisions and Bureaus is properly protected. Security Program Managers shall require the custodians of classified information in their Office, Board, Division or Bureau to make periodic inspections of their respective areas which shall ensure that the following minimum requirements are met:

(a) All classified information is stored in approved security containers.

(b) Burn bags, if utilized, are either stored in approved security containers or destroyed.

(c) Classified shorthand notes, carbon paper, carbon and plastic typewritter ribbons, rough drafts and similar papers have been properly stored or destroyed. As a matter of routine during working hours, such classified items should be placed in burn bags or other trash receptacles designated only for classified trash and shall be destroyed as soon as possible thereafter.

§ 17.96 Administrative aids for safeguarding classified material.

Appropriate forms shall be used on security containers for check purposes. Such forms shall be conspicuously attached to the outside of each container used for the storage of classified information. Each authorized person will record the time and date that he or she unlocks or locks the security container, followed by the person's initials. At the close of each working day, a person other than the individual locking the container will check the container, in the presence of the individual locking the container, to insure that it is secure. The time of the check followed by the checker's initials will be recorded. The check will be conducted each working day. If a container has not been opened, the date and the phrase "Not Opened" will be noted in addition to the time and the checker's intitials. A container will not be left unattended until it has been locked by an authorized person and checked by a second person. The person locking a container is responsible for insuring that another person checks the container.

Reversible "Open-Closed" signs, shall be utilized on security containers containing classified information. The respective side of the sign shall be displayed to indicate when the container is open or closed.

§ 17.97 Telephone or telecommunication conversations.

Classified information shall not be discussed over nonsecure telephones. Classified telephone conversations are authorized over approved secure (encrypted) communication circuits. Information concerning which telephones are secured in the Department may be obtained from Security Programs Managers or the Department Security Officer.

§ 17.98 Security of meetings and conferences.

The official responsible for arranging or convening a conference or other meeting is also responsible for instituting procedures and selecting facilities which provide adequate security if classified information is to be discussed or disclosed (see Department Order 2660.1). The responsible official will:

(a) Notify each person who is to be present or who is to discuss classified information of any security limitations that must be imposed because of:

(1) The level of access authorization.

(2) Requirement for access to the information by the attendees.

(3) Physical security conditions.

(b) Insure that each person attending the classified portions of the meetings has been authorized access to information of equal or higher classification than the information to be disclosed.

(c) Insure that the area in which classified information is to be discussed affords adequate acoustical security against unauthorized disclosure.

(d) Insure that adequate storage facilities are available, if needed.

(e) Control and safeguard any classified information furnished to those in attendance and retrieve the material or obtain receipts, as required.

(f) Monitor the meetings to insure that discussions are limited to the level authorized.

(g) Insure that meetings at which classified information is to be discussed will be held only in a United States Government area or at a cleared facility of a Department contractor or consultant. When necessary for the accomplishment of essential functions, a meeting involving classified information may be held at another location provided it has been specifically authorized by the Department Security Officer.

Subpart F—Foreign Government Information

§ 17.99 Identification.

Foreign Government Information encompasses:

(a) Information provided to the United States by a foreign government or international organization of governments in the expectation, expressed or implied, that the information is to be kept in confidence; or

(b) Information produced by the United States pursuant to a written joint agreement with a foreign government or international organization of governments requiring that either the information or the arrangement, or both, be kept in confidence. Such a written joint agreement may be evidenced by an exchange of letters, a memorandum of understanding, or other written record.

§ 17.100 Classification.

(a) Foreign Government Information classified and provided by a foreign government or international organization of governments shall retain its original classification designation or be assigned a United States classification designation that will ensure a degree of protection equivalent to that required by the government or organization that furnished the information. Original classification authority is not required for this purpose.

(b) Foreign Government Information that was not classified by a foreign entity but was provided with the expectation, expressed or implied, that it be held in confidence must be classified. The procedure for classification prescribed in Subpart B does not apply to the classification of Foreign Government Information because Executive Order No. 12065 provides for a presumption of at least identifiable damage to the national security in the event of unauthorized disclosure of such information. Therefore, Foreign Government Information shall be classified at least Confidential, and higher whenever the damage criteria of Secret and Top Secret are determined to be met.

§ 17.101 Duration of classification.

(a) Foreign Government Information shall be exempt from the automatic declassification and 20 year systematic review requirements of Subpart C.

(b) Unless guidelines developed pursuant to Subpart B prescribe dates or events for declassificaiton or for review for declassification:

(1) Foreign Government Informtion shall not be assigned a date or event for automatic declassification unless specified or agreed to by the foreign government or international organization of governments.

(2) Foreign Government Information classified by the Department on or after December 1, 1978, shall be assigned a date for review for declassification up to 30 years from the time the information was classified or acquired, whichever is earlier. Such information received undated shall be dated upon receipt. The provisions of § 17.19(b) are applicable to the classification duration of Foreign Government Information.

(3) Documents or material classified before December 1, 1978 that contain Foreign Government Information shall be marked for review for declassification 30 years from the date of origin, e.g., "Review on (insert date)."

§ 17.102 Declassification policy.

In weighing the need to protect information against the possible public interest in disclosure as prescribed in § 17.37, Department officials shall respect the intent of this regulation to protect Foreign Government Information and confidential foreign sources.

§ 17.103 Systematic review.

(a) The Attorney General shall, in consultation with the Archivist of the United States and, where appropriate, with the foreign governments or international organizations concerned, develop systematic review guidelines for 30-year old Foreign Government Information in the possession or under the control of the Department. These guidelines shall be kept current through review by the Attorney General at least once every two years unless earlier review for revision is requested by the Archivist of the United States. The Director, Office of Privacy and Information Appeals shall perform administrative functions necessary to effect such review by the Attorney General. These guidelines shall be authorized for use by the Archivist of the United States and may, upon approval of the Attorney General, be used by any agency having custody of the same categories of information.

(b) Thirty-year old Foreign Government Information originally received by the Department shall be reviewed in accordance with guidelines developed under paragraph (a) of this section. If, after applying the guidelines to this information, the reviewer determines that continued classification would be appropriate, the reviewer shall submit a recommendation for extension to the Attorney General.

(c) The Attorney General may extend the classification of Foreign Government Information originally received by the Department beyond 30 years when, in accordance with the provisions of this regulation, such extension is warranted. This authority may not be delegated. When classification is extended beyond 30 years, a date no more than 10 years later may be set for declassification or for the next review. That action and date shall be marked on the document. Subsequent reviews for declassification shall be set at no more than ten year intervals unless a longer interval has been authorized pursuant to § 17.40(b).

§ 17.104 Mandatory review.

Requests for mandatory review for declassification of Foreign Government Information shall be processed and acted upon in accordance with the provisions of § 17.44 through § 17.52, except that Foreign Government Information will be declassified only in accordance with the guidelines developed for such purpose and after necessary consultation with Offices, Boards, Divisions or Bureaus or other government agencies with subject matter interest. In cases where these guidelines cannot be applied to the Foreign Government Information requested, or in the absence of such guidelines, consultation with the foreign originator through appropriate channels normally should be effected prior to final action on the request. When the responsible Office, Board, Division or Bureau is knowledgeable of the foreign originator's view toward declassification or continued classification of the types of information requested, consultation with the foreign originator may not be necessary.

§ 17.105 Equivalent United States classification designations.

Except for the foreign security classification designation restricted, foreign classification designations, including those of international organizations of governments, i.e., NATO and CENTO, generally parallel United States classification designations.

§ 17.106 Marking other foreign government documents.

(a) If the security classification designation of foreign government documents is shown in English, no other classification marking shall be applied. If the security classification designation is not shown in English, the equivalent overall United States classification designation shall be marked conspicuously on the document. In those cases where foreign government documents are marked with a classification designation having no United States equivalent, such documents shall be marked and handled in accordance with § 17.106(b).

(b) Certain foreign governments and international organizations of governments use a fourth classification designation below Confidential. Such classification may be designated as Restricted. If foreign government documents are marked with such a classification designation, whether or not in English, no United States classification marking shall be applied but the Foreign Government Information so designated shall be protected as United States Confidential information.

(c) Dates for declassification or for review for declassification shall be marked on foreign government documents only as required by § 17.101 and § 17.103(c).

(d) In most cases, other marking requirements prescribed by this regulation for United States classified documents are not applicable to documents of foreign governments or international organizations of governments.

§ 17.107 Marking of information provided in confidence.

Documents containing Foreign Government Information not classified by the foreign government but provided to the Department in confidence shall be classified and marked with an appropriate United States classification.

§ 17.108 Marking of foreign government information in Department documents.

Except where such markings would reveal intelligence information Foreign Government Information incorporated into Department documents shall be identified in a manner that ensures that such information is not declassified prematurely or made accessible to nationals of a third country without consent of the originator. This requirement may be satisfied by including the appropriate identification in the portion or paragraph classification markings, e.g., (NATO-S) or (U.K.-C).

§ 17.109 Other foreign government information.

Classified Foreign Government Information shall be safeguarded or protected as prescribed by this regulation for United States classified information of a comparable level.

Subpart G—Access, Dissemination and Accountability

§ 17.110 Policy.

(a) No person may be given access to classified information or material originated by, in the custody or under the control of the Department, unless that person has been determined to be trustworthy and (except as provided in § 17.111(e)) unless access is necessary for the performance of official duties. Procedures shall be established by the Security Programs Managers of the Offices, Boards, Divisions and Bureaus to prevent any unnecessary access to classified information. No person is authorized to have access to classified information solely by the virtue of rank or position. Accordingly, all requests from the heads of the Offices, Boards, Divisions and Bureaus to the Department Security Officer for a personnel security clearance shall contain a demonstrable need for access to classified information. Further, the number of persons cleared and granted access to classified information shall be maintained at the minimum number that is consistent with operational requirements and needs.

(b) The determination of trustworthiness for eligibility for access to classified information (referred to as a security clearance) shall be made by the Department Security Officer or his designee and shall be based on appropriate security background investigations in accordance with applicable Executive Orders, Department regulations, Intelligence Community directives and Office of Personnel Management guidelines. Current and valid clearances issued to persons by other agencies of the Executive Branch may be accepted, for access purposes only, in lieu of granting such clearances by the Department Security Officer. Such clearance certification shall be accomplished by the Department Security Officer, upon request.

(c) The Department Security Officer may delegate, in writing, the authority to grant Department employees security clearances to qualified Security Programs Managers when, in the estimation of the Department Security Officer, he is assured that the operational need justifies such delegation and that such officials shall continually apply all clearance criteria in a uniform and correct manner during the adjudication of personnel security investigations. In those instances where such authority is delegated, the Department Security Officer shall reserve the right to review all personnel security cases which contain derogatory information that could be a deterrent to eligibility for clearance. The Department Security Officer shall reserve the right to withdraw such authority in any instance where it is determined that Department clearance policy and criteria set forth herein are not being expressly followed.

§ 17.111 Access by persons outside the Executive Branch.

(a) *General.* In accordance with the provisions of Department Order 2620.6, classified information originated by, or in the custody of, the Department may be made available to individuals or agencies outside the Executive Branch provided that such information is necessary for performance of a function from which the Government will derive a benefit or advantage, and that such release is approved by the Attorney General or the Assistant Attorney General for Administration, and is not prohibited by the originating department or agency (or foreign government in the case of Foreign Government Information). Recipients must be shown to be trustworthy by the Department Security Officer and recipients must agree to safeguard the information in accordance with the provisions of this regulation. Heads of Offices, Boards, Divisions and Bureaus shall determine, prior to the release of classified information, the propriety of such action, in the interest of the national security and the recipient's security clearance status and need-to-know.

(b) *Congress.* Access to classified information by Congress, its committees, members, and staff representatives shall be in accordance with the provisions of Department Order 2620.6. Any Department employee testifying before a Congressional Committee in executive session in relation to a classified matter shall obtain the assurance of the committee that individuals present have a security clearance commensurate with the highest classification of the information that may be discussed. Members of Congress, by virtue of their elected positions, are not investigated or cleared by the Department.

(c) *Non-Contractor Personnel.* Personnel outside the Executive Branch who are not subject to any Department contracts or grants and therefore are exempt from the provisions of the Defense Industrial Security Program and who require access to classified information originated by or in the custody of the Department, shall be processed for such clearance in accordance with the provisions of Department Order 2620.2.

(d) *Contractor Personnel.* Personnel who are subject to a Department contract or grant or who are rendering consultant services to the Department and require access to classified information originated by or in the custody of the Department shall be processed for such access/clearance in accordance with the provisions of the Defense Industrial Security Program and Department Order 2600.3.

(e) *Historical Researchers and Former Presidential Appointees.* (1) The requirement in § 17.110 that access to classified information may be granted only as is necessary for the performance of official duties may be waived for persons who:

(i) Are engaged in historical research projects or

(ii) Have previously occupied policy-making positions to which they were appointed by the President.

(2) All persons receiving access pursuant to this subparagraph must have been determined to be trustworthy by the Department Security Officer as a precondition before receiving access. Such determination shall be based on such investigation as the Department Security Officer deems appropriate. Historical researchers and former Presidential appointees shall not have access to Foreign Government Information without the written permission from appropriate authority of the foreign government concerned.

(3) Waivers of the "need-to-know" requirement under this subparagraph may be granted by the Department Security Officer provided that the Security Programs Manager of the Office, Board, Division or Bureau with classification jurisdiction over the information being sought:

(i) Makes a written determination that such access is consistent with the interests of national security;

(ii) Limits such access to specific categories of information over which the Department has classification jurisdiction;

(iii) Maintains custody of the classified information at a Department facility;

(iv) Obtains the recipient's written and signed agreement to safeguard the information in accordance with the provisions of this regulation and to authorize a review of any notes and manuscript for determination that no classified information is contained therein;

(v) And in the case of former Presidential appointees, limits their access to items that such former appointees originated, reviewed, signed or received while serving as a Presidential appointee and insures that such appointee does not remove or cause to be removed any classified information reviewed.

(4) If access requested by historical researchers and former Presidential appointees requires the rendering of services for which fair and equitable fees may be charged pursuant to 31 U.S.C. 483a, the requestor shall be so notified and fees may be imposed.

(f) *Judicial proceedings.* (1) Any Department employee or organization receiving an order or subpoena from a Federal or State court to produce National Security Information; required to submit National Security Information for official Department litigative purposes; or receiving National Security Information from another organization for production of such in litigation, shall immediately determine from the agency originating the classified information whether the information can be declassified.

(2) If declassification is not possible, the Department employee or organization and the assigned Department legal counsel in the case shall take all appropriate action to protect such information pursuant to the provisions of this paragraph.

(3) If a determination is made to produce such information in a judicial proceeding in any manner, the assigned Department legal counsel shall take all steps necessary to ensure the cooperation of the court and where appropriate, opposing counsel, in safeguarding and retrieving the information pursuant to the provisions of this regulation. The following *minimum* security safeguards shall be requested of the court and, where appropriate, sought to be included in a judicial protective order:

(i) Every effort shall be made to limit production of classified information to an *in camera exparte* review by the court to determine the relevancy of the classified information in question.

(ii) Classified information shall not be introduced into evidence or otherwise disclosed at a proceeding without the prior approval of either the originating agency, the Attorney General, or the President.

(iii) Attendance at any proceeding where classified information is to be introduced or disclosed should be limited to the judge(s) of the court and to those other persons whose duties require knowledge or possession of the classified information *and* who have been determined to be trustworthy by the Department Security Officer.

(iv) All such proceedings shall be held in a secured court or hearing room pursuant to Department security procedures and regulations.

(v) Dissemination and accountability controls shall be established for all classified information offered for identification or introduced into evidence at such proceedings.

(vi) All transcripts of such proceedings shall be appropriately marked to show the classified portions and placed under seal upon transcription.

(vii) All classified information including the appropriate portions of the transcript shall be handled and stored in a manner consistent with the provisions of this regulation.

(viii) At the conclusion of the proceeding, all classified information shall be returned to the Department or placed under seal by the court.

(ix) All classified notes, drafts, or any other documents generated during the course of the proceedings and containing classified information shall be retrieved by Department employees and immediately transferred to the Department for safeguarding and destruction as appropriate.

(x) All persons who become privy to classified information disclosed under the provisions of this section shall be fully advised as to the classification level of such information, all pertinent safeguarding and storage requirements, and their liability in the event of unauthorized disclosure.

(4) This paragraph shall apply to all litigation, including matters arising under the Freedom of Information Act, 5 U.S.C. 552, as amended.

§ 17.112 Access by foreign nationals, foreign governments, international organizations, and immigrant aliens.

(a) Classified information may be released to foreign nationals, foreign governments and international organizations, only when authorized under the provisions of the National Disclosure Policy 1/10.

(b) If it is in the interest of the national security, Secret and Confidential information may be released, on a limited basis, to immigrant aliens in the performance of official duties, provided that the Department Security Officer determines the individual is reliable and trustworthy in accordance with this subpart.

(c) Immigrant aliens may be granted a Limited Access Authorization to Top Secret information provided that the head of the Office, Board, Division or Bureau concerned makes a personal written request and determination to the Department Security Officer that such access is essential to meet Government requirements and that the Department Security Officer determines that the individual is reliable and trustworthy in accordance with this subpart.

§ 17.113 Procedures for requesting a security clearance for a Department employee.

Requests for determination of eligibility for a security clearance shall be in the form of a memorandum addressed from the head of the Office, Board, Division or Bureau concerned to the Department Security Officer. Exception to this requirement may be granted in accordance with the provisions of § 17.110(c). Two copies of the request shall be submitted. The memorandum shall contain the following items:

(a) *Degree of clearance requested.* National security clearances are categorized into three categories, namely Top Secret, Secret, and Confidential. The categories of security clearances are related directly to the levels of National Security Information to which access is required.

(b) *Justification for requested clearance.* A person must have a need for access to the particular classified information or material sought in connection with his/her official duties or obligations. This need-to-know is the essence for any justification for a security clearance. The justification for a clearance does not have to be long or detailed, however, a strict need-to-know shall be established before consideration to grant a security clearance can be given.

(c) *Continuous evaluation of need-to-know.* A continuing review of the established need-to-know shall be conducted by the Security Programs Manager.

(d) *Request for administrative withdrawal.* The head of each Office, Board, Division or Bureau shall make provision to request the administrative withdrawal of a security clearance of persons for whom there is no foreseeable need for access to classified information or material in connection with the performance of their official duties, for example, termination of employment or change in position. Likewise, when a person no longer needs access to classified material bearing a particular security classification category, a request that the security clearance be adjusted to the classification category still required for the performance of his/her official duties and obligations shall be made by the Security Programs Manager of the Office, Board, Division or Bureau concerned. In both instances, such action resultant from these requests will be without prejudice to the person's eligibility for future security clearances.

§ 17.114 Other access situations.

When necessary in the interests of national security, the Attorney General or the Assistant Attorney General for Administration may authorize access by persons outside the Federal Government, other than those enumerated above, to classified information upon determining that: (a) The recipient is trustworthy for the purpose of accomplishing a national security objective and (b) that the recipient can and will safeguard the information from unauthorized disclosure. The clearance procedures and provisions of Department Order 2620.6 shall be followed in such instances.

§ 17.115 Dissemination.

(a) *Policy.* Expect as otherwise provided by section 102 of the National Security Act of 1947, 50 U.S.C. 403, classified information originating within the Department may not be disseminated outside any other agency to which it has been made available without the consent of the Department. Conversely, classified information originating in a department or agency other than the Department shall not be disseminated outside the Department without first obtaining the consent of the originating department or agency. Office, Board, Division and Bureau Security Programs Managers shall establish procedures consistent with this regulation for the dissemination of classified information. The originating official or Office, Board, Division or Bureau may prescribe specific restrictions on dissemination of classified information when necessary.

(b) *Restraint on Reproduction.* All or portions of documents and materials that contain Top Secret information shall not be reproduced without the consent of the originator or higher authority. Any stated prohibition or marking on any classified document (regardless of classification) against reproduction shall be strictly observed (see Subpart D). The following measures apply to reproduction equipment and to the reproduction of classified information:

(1) Copying of documents containing classified information shall be minimized;

(2) Officials within each Office, Board, Division or Bureau shall be authorized by the Security Programs Manager, in writing, to approve the reproduction of Top Secret and Secret information; shall be designated by position title, and shall review the need for reproduction of classified documents with a view toward minimizing reproduction;

(3) Specific reproduction equipment shall be designated for the reproduction of classified information. Rules for reproduction of classified information shall be posted on or near the designated equipment;

(4) Notices prohibiting reproduction of classified information shall be posted on equipment used only for the reproduction of unclassified information;

(5) Security Programs Managers shall ensure that equipment used for reproduction of classified material does not leave latent images in the equipment or on other material;

(6) All copies of classified documents reproduced for any purpose, including those incorporated into a working paper, are subject to the same controls prescribed for the document from which the reproduction is made and;

(7) Records shall be maintained to show the number and distribution of reproduced copies of all Top Secret documents and of all classified documents covered by special access programs distributed outside the Department. Also, records shall be maintained concerning all Secret and Confidential documents which are marked with special dissemination and reproduction limitations.

§ 17.116 Transmission of top secret information.

Transmission of Top Secret information shall be effected only by:

(a) Authorized and cleared Department messenger-courier services,

(b) The Department of State Courier System,

(c) The Armed Forces Courier Service,

(d) Cleared and designated Department employee traveling on a conveyance owned, controlled or chartered by the Government,

(e) Cleared and designated Department employees traveling by surface transportation,

(f) Cleared and designated Department employees traveling on scheduled commercial passenger aircraft within and between the United States, its Territories and Canada,

(g) Cleared and designated Department contractors traveling within and between the United States and its Territories provided that the transmission has been authorized in writing by the appropriate contracting officer or his designated representative and, the designated employees have been briefed in their responsibilities as couriers or escorts for the protection of Top Secret material,

(h) A crytographic communication system authorized by the Director, National Security Agency, or other secure communications circuits approved by the Department Security Officer.

§ 17.117 Transmission of secret and confidential information.

Transmission of Secret and Confidential information may be effected by:

(a) Any of the means approved for the transmission of Top Secret information except that Secret information may be introduced into the Armed Forces Courier Service only when the control of such information cannot be otherwise maintained in United States custody;

(b) Appropriately cleared Department contractors within and between the United States and it Territories provided that: (1) The designated individuals have been briefed in their responsibilities as couriers or escorts for protecting classified information; and (2) the classified information remains under the constant custody and protection of the contractor personnel at all times;

(c) United States Postal Service registered mail with registered mail receipt within and between the 50 States, the District of Columbia, and Puerto Rico;

(d) United States Postal Service registered mail with registered mail receipt through DOD Postal Service facilities outside the 50 States, the District of Columbia, and Puerto Rico, provided that the information does not at any time pass out of United States citizen control and does not pass through a foreign postal system or any foreign inspection;

(e) United States Postal Service and Canadian registered mail with registered mail receipt between United States Government and Canadian government installations in the United States and Canada;

(f) Government and Government contract vehicles including aircraft, ships of the United States Navy, civil service operated United States Naval ships, and ships of United States registry when these carriers are under appropriately cleared escort personnel. Appropriately cleared operators of vehicles, officers of ships or pilots of aircraft who are United States citizens may be designated as escorts provided the control of the carrier is maintained on a 24-hour basis. The escort shall protect the shipment at all times, through personal observation or authorized storage to prevent inspection, tampering, pilferage, or unauthorized access. However, observation of the shipment is not required during the period it is stored in an aircraft or ship in connection with flight or sea transit, provided the shipment is loaded into a compartment that is not accessible to any unauthorized persons or in a specialized secure, safe-like container.

§ 17.118 Transmission of classified information to foreign governments.

Subsequent to a determination by competent authority that classifed information may be released to a foreign government, it shall be transmitted only to an embassy or official agency or representative of the recipient government.

§ 17.119 Envelopes or containers.

(a) Whenever classified information is transmitted, it shall be enclosed in two opaque sealed envelopes or similar wrappings where size permits, except as provided below.

(b) Whenever classified material is transmitted and the size of the material is not suitable for transmission in accordance with § 17.119(a), it shall be enclosed in two opaque sealed containers, such as boxes or heavy wrappings.

(c) Material used for packaging shall be of such strength and durability as to provide security protection while in transit, to prevent items from breaking out of the container, and to facilitate the detection of any tampering with the container. The outer wrappings shall conceal all classifed characteristics.

§ 17.120 Addressing.

(a) Addresses forwarding classified information shall be specific so that couriers/messengers may easily identify the intended recipients. Use of office code numbers or such phrases in the address as "Attention: Research Department," or similar aids in expediting internal routing, in addition to the organization address is encouraged.

(b) Classified written information should be folded in such a manner that the text will not be in direct contact with the inner envelope or container. A receipt form shall be attached to or enclosed in the inner envelope or container for all classified information. When written materials of different classifications are transmitted in one package, they shall be wrapped in a single inner envelope or container. A receipt listing all classifed information shall be attached or enclosed. The inner envelope or container shall be marked with the highest classification of the contents.

(c) The inner envelope or container shall show the address of the receiving activity, classification, including, where appropriate, the "Restricted Data" marking, and any applicable special instructions. It shall be carefully sealed to minimize the possibility of access without leaving evidence of tampering.

(d) An outer or single envelope or container shall show the complete and correct address of the receiving activity and the return address of the sender.

(e) An outer cover or single envelope or container shall not bear a classification marking, a listing of the contents divulging classified information, or any other unusual data or marks that might invite special attention to the fact that the contents are classified.

(f) Care must be taken to ensure that classified information intended only for the United States elements of international staffs or other organizations is addressed specifically to those elements.

§ 17.121 Receipt systems.

(a) Top Secret information shall be transmitted under a chain of receipts covering each individual who receives custody.

(b) Secret and Confidential information shall be transmitted by a receipt between activities and other authorized addressees. Except that in lieu of receipts, the heads of Offices, Boards, Divisions and Bureaus may prescribe such procedures as are necessary to control effectively Secret and Confidential information.

(c) Receipts shall be provided by the transmitter of the material and the forms shall be attached to the inner envelope or cover.

(1) Receipt forms shall be unclassified and contain only, such information as is necessary to identify the material being transmitted.

(2) Receipts shall be retained for at least two years.

§ 17.122 Transmission exceptions.

Exceptions to the transmission requirements for classified information may be authorized by the Department Security Officer, provided the exception affords an equal amount of protection and accountability as that provided by the requirements set forth above. Proposed exceptions that do not meet these minimum standards shall not be approved.

§ 17.123 General courier restrictions.

Appropriately cleared personnel may be authorized to escort/hand-carry classified material between their organization and an office to be visited, subject to the following conditions:

(a) The storage provisions of this regulation shall apply at all stops enroute to the destination, unless the information is retained in the personal possession and constant surveillance of the individual at all times. The hand-carrying of classified information on trips that involve an overnight stopover is not permissible without advance arrangements for proper overnight storage in a Government installation or a cleared contractor's facility.

(b) Classified material shall not be read, studied, displayed, or used in any manner in public conveyances or places.

(c) When classified material is carried in a private, public, or Government conveyance, it shall not be stored in any detachable storage compartment such as automobile trailers or luggage racks.

(d) Security Programs Managers shall provide a written statement to all individuals escorting or carrying classified material aboard commercial passenger aircraft authorizing such transmission. This authorization statement may be included in official travel orders and should ordinarily permit the individual to pass through passenger control points without the need for subjecting the classified material to inspection. Specific procedures for carrying classified documents aboard commercial aircraft are contained in § 17.125. The Security Programs Managers shall ensure that employees carrying classified information abroad have obtained an official passport and other necessary documentations as required by the Department of State.

(e) Each activity shall account for all classified information carried or escorted by travelling personnel.

(f) Individuals authorized to carry or escort classified material shall be fully informed of the provisions of this subpart prior to departure from their duty station.

§ 17.124 Restrictions on hand-carrying classified information aboard commercial passenger aircraft.

Classified information shall not be hand-carried aboard commercial passenger aircraft unless:

(a) There are no other authorized means available to move the information to accomplish operational objectives or contract requirements in a timely manner.

(b) The hand-carrying has been authorized by the Department Security Officer or the Security Programs Manager of the Office, Board, Division or Bureau concerned, or by their designated Security Officers.

(c) The hand-carrying is accomplished aboard a United States carrier. Foreign carriers will be utilized only when no United States carrier is available and then the information must remain in the custody and physical control of the United States escort at all times.

§ 17.125 Procedures for hand-carrying classified information on commercial passenger aircraft.

(a) *Basic Requirements.* (1) Advance and continued coordination by the Office, Board, Division or Bureau shall be made with departure airline and terminal officials and, where possible, with intermediate transfer terminals to develop mutually satisfactory arrangements within the terms of this issuance and FAA guidance. Specifically, a determination should be made beforehand as to whether documentation described in § 17.125(c), will be required. Local Federal Aviation Administration Security Officers can be of assistance in making this determination.

(2) The individual designated as courier shall be in possession of a Department picture identification card and written authorization from the Security Programs Manager of the organization concerned or the Department Security Officer to carry classified information.

(3) The courier shall be briefed as to the provisions of this Subpart.

(b) *Procedures for Carrying Classified Information.* Persons carrying classified information should process through the airline ticketing and boarding procedure in the same manner as all other passengers except for the following:

(1) The classified information being carried shall contain no metal bindings and shall be contained in sealed envelopes or other suitable containers. Should such envelopes or packages be contained in a briefcase or other carry-on luggage, the briefcase or luggage shall be routinely offered for opening and inspection for weapons.

(2) Opening or reading of the classified document by the screening official is not permitted.

(c) *Procedures for Transporting Classified Information in Large Packages.* Classified information in large sealed or packaged containers shall be processed as follows:

(1) The Department official who has authorized the transport of the classified information shall notify the appropriate air carrier in advance.

(2) The passenger carrying the information shall report to the affected airline ticket counter prior to boarding, present his documentation and the package or cartons to be exempt from screening. The airline representative will be requested to review the documentation and description of the containers to be exempt.

(3) If satisfied with the identification of the passenger and his docu-

mentation, the airline official will be requested to provide the passenger with an escort to the screening station and authorize the screening personnel to exempt the container from physical or other type inspection.

(4) If the airline officials or screening personnel refuse to permit the package to be loaded onto the aircraft without inspection, the courier will contact the appropriate Department official for further instructions.

(5) The actual loading and unloading of the information will be under the supervision of a representative of the air carrier; however, appropriately cleared personnel shall accompany the material and keep it under surveillance during loading and unloading operations. In addition, appropriately cleared personnel must be available to conduct surveillance at any intermediate stops where the cargo compartment is to be opened.

§ 17.126 Accountability of Top Secret information.

(a) Top Secret Control Officers and alternate Top Secret Control Officers shall be designated, in writing, by Security Programs Managers within all Offices, Boards, Divisions and Bureaus. Copies of such designations shall be forwarded to the Department Security Officer. Such officers shall be responsible for receiving, transmitting, and maintaining accountability registers for Top Secret information. They shall be selected on the basis of experience, reliability, and shall have appropriate security clearances. Further, Security Programs Managers shall ensure that written procedures concerning accountability of Top Secret information are promulgated. A copy of such procedures shall be forwarded to the Department Security Officer.

(b) All Top Secret information received or originated with the Department shall be immediately registered by an appropriate Top Secret Control Officer or alternate. Such registering process shall include the recording of: the date the document was received and originated; the classification of the document; the number of copies; the title and description of the document; the disposition and date; the location of the document; and the serial number assigned to the document. For example, the 25th Top Secret document received within Criminal Division during 1980 could be assigned the following Top Secret control number: CRM-80-0025.

(c) Top Secret accountability registers shall be maintained by each originating and receiving office for all Top Secret documents received or in its custody.

(d) The name and title of all individuals, including stenographic and clerical personnel, to whom information in Top Secret documents has been disclosed, and the date of such disclosure, shall be recorded. The use of a sheet of paper permanently attached to the document concerned may serve as a disclosure record or log for these purposes. Disclosures to individuals who may have had access to containers in which Top Secret information is stored need not be recorded on disclosure records. Disclosure records shall be retained for two years after the document concerned is transferred, downgraded or destroyed.

§ 17.127 Inventories.

Top Secret documents and material shall be inventoried at least once annually. Repositories, libraries, or activities which store large volumes of classified information, however, may limit their annual inventory to documents and material which have been disclosed within the past year, and 10 percent of the remaining inventory. If a storage system contains large volumes of information and security measures are adequate to prevent access by unauthorized persons, a request for waiver of the annual inventory requirement accompanied by full justification may be submitted to the Department Security Officer.

§ 17.128 Accountability of secret and confidential information.

Security Programs Managers within all Offices, Boards, Divisions, and Bureaus are responsible for ensuring that accountability procedures for Secret and Confidential information are established within their respective organizations. Such procedures shall be written and shall pertain to Secret and

Confidential information originated or received by a Department component; distributed or routed to a subelement of such component; and disposed of by the component by transfer of custody or destruction. Copies of written procedures for the accountability and control of Secret and Confidential information shall be forwarded to the Department Security Officer. As a minimum, such procedures shall provide for the identity of the document; the date of receipt; and the disposition of the document.

§ 17.129 Accountability of reproduced documents.

Reproduced copies of Top Secret, Secret and Confidential documents are subject to the same accountability and controls as the original documents (see § 17.115(b)).

§ 17.130 Working papers.

Working papers are classified documents and material accumulated or created in the preparation of finished documents and material. Working papers containing classified information shall be dated when created; marked with the highest classification of any information contained therein; protected in accordance with the assigned classification; destroyed when no longer needed; marked with a declassification or review date when placed in permanent files. Working papers shall be accounted for and controlled in the manner prescribed for a finished document of comparable classification when released by the originator or transmitted through message center channels; filed permanently; or retained more than 180 days from date of origin.

Subpart H—Disposal and Destruction of Classified Information

§ 17.131 Policy.

All record and nonrecord National Security Information shall be destroyed in a manner described herein whenever the operational or historical need for the particular classified information ceases to exist. Every effort shall be made to destroy National Security Information as soon as practical for two basic reasons:

(a) First, the longer large volumes of National Security Information are existent, the greater the potential for compromise.

(b) Second, the physical and document security requirements involving National Security Information are expensive to fulfill and maintain. The smaller the amount of National Security Information in existence within the Department, the fewer storage containers and security areas are required and the smaller the budgetary allotment must be allocated by the Department to fulfill security requirements.

§ 17.132 Record material.

Documentary record material made by an Office, Board, Division or Bureau of the Department in connection with the transaction of public business, and preserved as evidence of the organization, functions, policies, operations, decisions, procedures, or other activities of any Department or Agency of the government, may be disposed of or destroyed only in accordance with Department Order 2710.3, Chapter 4.

§ 17.133 Nonrecord material.

Nonrecord material containing classified information (including shorthand notes, used carbon paper, onetime typewriter ribbons, preliminary drafts, plates, records and tapes, stencils, negatives, and the like, and wastage incidental thereto) shall be destroyed, in accordance with this Subpart, as soon as it has served its purpose. Prior to destruction, this material must be protected in a manner to prevent unauthorized disclosure of the information in accordance with the safeguarding procedures contained in this regulation.

§ 17.134 Methods of destruction.

Top Secret, Secret and Confidential classified information and material (record and nonrecord) shall be destroyed in the presence of an appropriately cleared official by burning, melting, chemical decomposition, pulping, pulverizing, shredding or other mutilation sufficient to preclude recognition or reconstruction of the classified information.

§ 17.135 Records of destruction.

(a) Records of destruction are required for Top Secret and Secret information and shall be dated and signed by two officials (destruction and witnessing officials) witnessing actual destruction. If destruction is accomplished by an approved central disposal system, the destruction record shall be signed by the witnessing officials at the time the material is delivered at the facility. Records of destruction shall be maintained for a minimum of two years after which they may be destroyed. Such records shall contain the identification of the document(s) destroyed, the method of destruction used, the time and place of destruction, the reason for destruction, and the name of the destroying official and witness.

(b) The Security Programs Manager, his appointed Security Officer(s) when appropriate, Top Secret Control Officers or their alternates, or custodians of classified information, are authorized to destroy National Security Information. An additional person, who possesses a security clearance at the same or higher level than the classification of the material being destroyed, shall witness the destruction thereof. The destruction officials shall be trained in the operation of the equipment being used for destruction and shall assure that destruction is accomplished in accordance with provisions of this subpart.

Subpart I—Special Access Programs

§ 17.136 Policy.

It is the policy of the Department to utilize the standard classification categories and the applicable sections of Executive Order No. 12065 and its implementing Information Security Oversight Office Directive to limit access to classified information on a "need-to-know" basis to personnel who have been determined to be trustworthy. It is the further policy to apply the "need-to-know" principle so that there will be no need by the Department to resort to formal special access programs which further restrict access to classified information. However, special access programs may be created or continued on a specific showing that:

(a) Normal management and safeguarding procedures are not sufficient to limit "need-to-know" or access;

(b) The number of persons who will need access will be reasonably small and commensurate with the objective of providing extra protection for the information involved; and

(c) The special access controls balance the need to protect the information against the full spectrum of need to use the information.

§ 17.137 Authority for establishing special access programs.

The Attorney General or the Assistant Attorney General for Administration may establish special access programs to control access to, distribution and protection of, particularly sensitive information, originated within the Department and classified pursuant to Executive Order No. 12065. Such establishment shall be in writing. However, special access programs involving intelligence sources and methods, such as the Sensitive Compartmented Information Program, may be established only by the Director of Central Intelligence.

§ 17.138 Requesting the establishment or renewal of special access programs.

(a) Special access program requests shall be in writing and shall contain the information specified in § 17.139, below. Such requests shall be from the head of the Office, Board, Division or Bureau concerned and addressed to the Assistant Attorney General for Administration through the Department Security Officer. After a decision has been made concerning approval/disapproval, the original copy shall be maintained for records purposes by the Department Security Officer.

(b) Special access programs approved within the Department are required to be reviewed regularly (at least annually) by the Office, Board, Division or Bureau concerned and by the Department Security Officer. All special access programs established within the Department shall terminate automatically every five years unless renewed in accordance with the procedures established in § 17.140.

§ 17.139 Information required in requests for special access programs.

Each special access program request, whether for establishment or renewal, shall contain the following information:

(a) Office, Board, Division or Bureau concerned (including subunit),

(b) Unclassified name or short title of the program,

(c) Relationship, if any, to other special access programs within the Department or other departments,

(d) Rationale and justification for establishment of a special access program, including the reason(s) why normal management and safeguarding procedures for classified information are inadequate,

(e) Estimated number of persons to be granted special access within the Department, in other departments, and outside the Executive Branch or United States Government,

(f) All instructions pertaining to the program security requirements including, but not limited to, those governing access to program information.

§ 17.140 Review, continuation and accounting for special access programs.

(a) Within 180 days after the effective date of this regulation, the Department Security Officer shall review all existing special access programs. Such programs shall be continued only in accordance with the procedures specified in §§ 17.138 and 17.139.

(b) The Department Security Officer shall account for and maintain a listing of, those special access programs requested and approved by the Attorney General. The Director, Information Security Oversight Office shall have non-delegable access to all such accountings.

Subpart J—Executive Branch Oversight and Policy Direction

§ 17.141 National Security Council.

Pursuant to the provisions of Executive Order No. 12065, the National Security Council may review all matters with respect to its implementation and shall provide overall policy direction for the Information Security Program.

§ 17.142 Administrator of General Services.

The Administrator of General Services is responsible for implementing and monitoring the Information Security Program established pursuant to Executive Order No. 12065. In accordance with the Order, this responsibility has been delegated to the Information Security Oversight Office.

§ 17.143 Information Security Oversight Office.

(a) *Composition.* The Information Security Oversight Office has a full time Director appointed by the Administrator of General Services with approval of the President. The Director is supported by a staff appointed by the Administrator of General Services.

(b) *Functions.* The Director of the Information Security Oversight Office is charged with the following principal functions that pertain to the Department:

(1) Oversee Department actions to ensure compliance with Executive Order No. 12065 and implementing Directives and this regulation;

(2) Consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the Information Security Program, including appeals from decisions on declassification requests;

(3) Report annually to the President through the Administrator of General Services and the National Security Council on the implementation of Executive Order No. 12065;

(4) Review all Department implementing regulations and agency guidelines for systematic declassification review. The Director shall require any regulation or guideline to be changed if it is not consistent with this regulation or implementing directives. Any such decision by the Director may be appealed to the National Security Council. The Department regulation or guideline shall remain in effect

until the appeal is decided or until one year from the date of the Director's decision, whichever occurs first.

(5) Conduct on-site reviews of the Department Information Security Program and to require of the Department such reports, information, and other cooperation as necessary to fulfill his responsibilities. If such reports, inspection, or access to specific categories of classified information would pose an exceptional national security risk, the Attorney General may deny access. The Director may appeal denials to the National Security Council. The denial of access shall remain in effect until the appeal is decided or until one year from the date of the denial, whichever occurs first.

(6) Require that Department information classified in violation of Executive Order No. 12065 be declassified.

(c) *Coordination.* Security Programs Managers of the Offices, Boards, Divisions and Bureaus shall ensure that any requirements levied directly on their organizations by the Information Security Oversight Office are brought to the attention of the Department Security Officer.

§ 17.144 Interagency Information Security Committee.

Pursuant to Executive Order No. 12065, an Interagency Information Security Committee has been established. It is chaired by the Director of the Information Security Oversight Office and is comprised of representatives of the Secretaries of State, Defense, Treasury, and Energy, the Attorney General, the Director of Central Intelligence, the National Security Council, the Domestic Policy Staff, and the Archivist of the United States. Representatives of other agencies may be invited to meet with the Committee on matters of particular interest to those agencies. The Committee shall meet at the call of the Chairperson or at the request of a member agency and shall advise the Chairperson on implementation of Executive Order No. 12065.

[Order No. 966-82, 47 FR 2861, Jan. 20, 1982]

Subpart K—Department of Justice Security Responsibilities

§ 17.145 General responsibilities and duties.

It shall be the responsibility and duty of each officer and employee of the Department having knowledge of classified information or material relating to the national security no matter how much knowledge was obtained to familiarize himself with, and adhere to the provisions of this regulation concerning National Security Information and material. It shall be the responsibility of the Department Security Officer to establish an orientation program throughout the Department for the instruction and familiarization of employees with the provisions of this regulation. Such program shall initially emphasize the changes in the rules governing classification, declassification, and protection of National Security Information and material resulting from Executive Order No. 12065, the Information Security Oversight Office's implementing directive and this regulation. In addition, the Department Security Officer shall establish a continuing program for the instruction of employees regarding National Security Information and the provisions of this regulation.

§ 17.146 The Attorney General.

The Attorney General, upon request by the head of an agency or his duly designated representative, shall personally or through authorized representatives of the Department render an interpretation of Executive Order No. 12065, its implementing directive or this regulation with respect to any question arising in the course of its administration.

§ 17.147 Assistant Attorney General for Administration.

The Assistant Attorney General for Administration is the senior Department official having authority and responsibility to ensure effective and uniform compliance with implementation of Executive Order No. 12065 and Information Security Oversight Office Directive No. 1. As such, the Assistant Attorney General for Administration has delegated primary responsibility for providing guidance, oversight, developing policy and procedures governing the Department Information security Program to the Department Security Officer.

§ 17.148 Department Review Committee.

(a) The Department Review Committee is hereby established and is responsible for the following functions:

(1) To resolve all issues concerning implementation and administration of Executive Order No. 12065, Information Security Oversight Office Directive No. 1 concerning National Security Information and this regulation, including those issues concerning overclassification, failure to declassify, delays in declassification not otherwise resolved (the compromise of National Security Information excepted).

(2) To review all appeals of requests for records under the provisions of Mandatory Review for Declassification (Section 3-5, Executive Order No. 12065) and under the Freedom of Information Act (Title 5 U.S.C. 552) when the proposed denial is based on their continued classification under Executive Order No. 12065.

(3) To recommend to the Attorney General appropriate administrative sanctions to correct abuse or violation of any provision of Executive Order No. 12065, the Information Security Oversight Office Directive, or this regulation (the compromise of National Security Information excepted).

(4) To review, on appeal, challenges to classification actions.

(b) The voting members of the Department Review Committee shall consist of a senior representative from each of the following elements within the Department:

(1) Office of the Deputy Attorney General.

(2) Office of Legal Counsel.

(3) Criminal Division.

(4) Justice Management Division.

(5) Federal Bureau of Investigation.

(6) Office of Intelligence Policy and Review.

(c) The head of each component listed will designate a voting member and an alternate in writing to the Chairman of the Department Review Committee, who shall be designated by the Attorney General from among the voting members.

(d) The Office of Privacy and Information Appeals, Office of the Associate Attorney General, shall provide the necessary administrative staff in support of the Department Review Committee.

[Order No. 920-80, 45 FR 81490, Dec. 10, 1980, as amended by Order No. 966-82, 47 FR 2861, Jan. 20, 1982]

§ 17.149 The Office of Professional Responsibility.

The Office of Professional Responsibility shall investigate, or cause to be investigated, all suspected or known security violations or compromises of National Security Information detected within the Department or involving Department classified information, and shall make appropriate recommendations to the Attorney General concerning administrative and criminal sanctions.

§ 17.150 The Department Security Officer.

(a) There shall be a Department Security Officer, and such assistants as he may designate, whose duty it shall be to supervise the administration of these regulations. Except as otherwise provided in this regulation, the Department Security Officer shall also carry out the functions and exercise the authority of the Attorney General and the Department Review Committee in the administration of this regulation within the Department.

(b) As provided in Paragraph 6.c., Department Order 2600.2A, the Department Security Officer is also responsible for the development, supervision, and administration of Department Security Programs, including the promulgation of Department-wide policy and procedures and auditing for compliance with security directives.

(c) With respect to questions of law and policy that pertain to safeguarding National Security Information, the Department of Justice Security Officer shall seek advice from the Office of Intelligence Policy and Review.

[Order No. 920-80, 45 FR 81490, Dec. 10, 1980, as amended by Order No. 966-82, 47 FR 2861, Jan. 20, 1982]

§ 17.151 Heads of Offices, Boards, Divisions and Bureaus.

Pursuant to Department Order 2600.2A, the heads of Offices, Boards, Divisions and Bureaus are responsible for effective implementation within their respective organizations of all Department security regulations and programs including the Department National Security Information Program. Heads of Offices, Boards, Divisions and Bureaus or their Security Programs Managers shall immediately report any violations of the provisions of this order to the Department Security Officer and the Office of Professional Responsibility.

§ 17.152 Security programs managers.

Pursuant to Paragraph 6.d., Department Order 2600.2A, the Security Programs Managers possess the delegated responsibility for the management and coordination of the document security program within his/her organization. In such a capacity, the Security Programs Managers are responsible for the implementation and administration of the Department's Security Program are responsible for observing, enforcing, and implementing security regulations or procedures pertaining to the classification, declassification, safeguarding, handling, and storage of classified National Security Information. Further, Security Programs Managers are responsible for insuring that all employees are given adequate instructions in the provisions of Department security regulations and procedures.

§ 17.153 Security officers.

Security Officers are responsible to their appointing authority for implementation and administration of the Document Security Program as delegated and assigned in accordance with Paragraph 6.e. of Department Order 2600.2A.

§ 17.154 Employees.

The responsibility for the protection of classified information rests with each employee of the Department having possession of such information or knowledge of such information, no matter how that information was obtained. Each employee having access to classified information is personally responsible for familiarizing himself with and adhering to the provisions of this regulation. Further, all employees, upon receipt of the notification of security clearance for access to classified information, shall sign a statement that they understand and shall conform to the provisions herein.

Subpart L—Security Violations and Administrative Sanctions

§ 17.155 Violations subject to sanctions.

Officers and employees of the Department are subject to appropriate administrative sanctions if they:

(a) Knowingly and willfully classify or continue the classification of information in violation of Executive Order No. 12065, any implementing directives or this regulation;

(b) Knowingly, willfully and without authorization disclose information classified under Executive Order No. 12065 or prior orders or compromise classified information through negligence; or

(c) Knowingly and willfully violate any other provision of Executive Order No. 12065, any implementing directives or this regulation.

Sanctions include but are not limited to warning notices, reprimands, termination of classification authority, suspension or termination of security clearance, and as permitted by law, suspension without pay, forfeiture of pay, removal or dismissal. Sanctions will be imposed upon any person subject to these regulations and responsible for a violation specified under this Subpart as determined by the appropriate Department official upon recommendation by the Office of Professional Responsibility. In cases involving the compromise of classified information, the Attorney General, upon receiving a recommendation from the Office of Professional Responsibility, shall determine and impose appropriate sanction.

§ 17.156 Reporting security violations.

Any person subject to these regulations who suspects or has knowledge of a violation pursuant to § 17.155 (including the known or suspected loss or compromise of National Security Information) shall promptly report and confirm in writing the circumstances to the Security Programs Manager of the Office, Board, Division or Bureau concerned or to that official's appropriate representative. The Security Programs Manager shall take the following action forthwith:

(a) Prompt notification of the violation to the Department Security Officer and the Office of Professional Responsibility, to the originating office and any interested department or agency, if appropriate.

(b) The submission of a written report to the Department Security Officer and the Office of Professional Responsibility. Such report shall include the date the violation occurred, if known; the date of the discovery of the violation; the specific identification of the information involved in the violation; the national security classification or any caveats regarding the information involved; the probability of loss or compromise; an assessment of the damage incurred from a national security standpoint; corrective measures taken; the person(s) responsible for the violation; recommended administrative, disciplinary or legal action which should be taken. The written report should be received no later than ten working days after the discovery of the violation.

§ 17.157 Corrective action.

The Department Security Office shall ensure that appropriate and prompt corrective action is taken whenever a violation of § 17.155 occurs or repeated administrative discrepancies or repeated disregard of requirements of this regulation occurs. The Director, Information Security Oversight Office and the Office of Professional Responsibility shall be informed by the Department Security Officer, as appropriate, when such violations occur.

§ 17.158 Administrative discrepancies.

Repeated administrative discrepancies in the marking and handling of classified documents and material such as failure to show classification authority, failure to apply internal classification markings and incorrect computation of dates for declassification, or other repeated disregard of requirements of this regulation that are determined not to constitute a violation under § 17.155, may be grounds for adverse administrative action including warning, admonition, reprimand or termination of classification authority as determined appropriate by the head of the Office, Board, Division or Bureau concerned, in accordance with applicable policies and procedures.

PART 18—LEAA ADMINISTRATIVE REVIEW PROCEDURE

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AUTHORITY: Administrative Provisions, Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3701 et seq.

SOURCE: 38 FR 3566, Feb. 7, 1973, unless otherwise noted. Redesignated at 38 FR 8233, Mar. 30, 1973.

§ 18.1 Purpose and scope of the rules.

In order to accomplish the purposes of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, to promote and insure the appropriate distribution of all funds controlled by the Law Enforcement Assistance Administration, and to ensure compliance with the applicable laws and regulations, the rules and procedures set forth in this part shall be observed by all individuals and organizations applying for or receiving funds, either directly or through intermediate agencies, from the Law Enforcement Assistance Administration. The rules and procedures of this part govern all proceedings authorized under Chapter 46 of Title 42 of the United States Code.

§ 18.2 Definitions.

(a) *Administration.* The term "Administration" means the Law Enforcement Assistance Administration, as established under Chapter 46 of Title 42 of the United States Code, and includes every organizational instrumentality thereof.

(b) *Applicant.* The term "applicant" means any person who is authorized to apply directly to the Administration, under Chapter 46 of Title 42 of the United States Code, for a grant.

(c) *Grant.* The term "grant" means a direct award of funds between the Administration and the person to whom the funds have been allocated.

(d) *Grantee.* The term "grantee" means any person who is receiving a grant from the Administration.

(e) *Party.* The term "party" means any person authorized under Chapter 46 of Title 42 of the United States Code to participate in hearings or investigation proceedings.

(f) *Person.* The term "person" means any natural, corporate, or government entity.

(g) *Proceeding.* The term "proceeding" means either a hearing or an investigation.

(h) *Public hearing.* The term "public hearing" means a hearing in which any party may proffer evidence, and in which any person may be present and may testify with the permission of the hearing examiner.

(i) *Qualified counsel.* The term "qualified counsel" means any individual who is a member in good standing of the bar of the highest court of a State, which includes the Commonwealth of Puerto Rico, the District of Columbia, the territories of Guam, the Virgin Islands, and American Samoa.

(j) *Region.* The term "region" means any one of the ten (10) geographical divisions of the Administration.

(k) *State planning agency.* The term "State planning agency" means any organization established and operating under the authority of Subchapters II and III of Chapter 46 of Title 42 of the United States Code.

(l) *Sub-grant.* The term "sub-grant" means a distribution of funds between a State planning agency and the person to whom the funds have been allocated.

(m) *Sub-grant applicant.* The term "sub-grant applicant" means any person who is authorized to apply to a State planning agency for a sub-grant according to the rules and procedures promulgated by such State planning agency under 42 U.S.C. 3733.

(n) *Sub-grantee.* The term "sub-grantee" means any person who is receiving a sub-grant from a State planning agency.

AUTHORIZED PROCEEDINGS

§ 18.31 Administrative investigations.

(a) *Compliance investigation.* The responsible Administration official or his designee will make a prompt investigation under 42 U.S.C. 3757 whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with provisions of the "Act" and regulations promulgated by the administration or plan or application submitted under the "Act." The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance occurred, and other factors relevant to a determination as to whether the recipient has failed to comply.

(b) *Resolution of matters.* (1) If an investigation pursuant to paragraph (a) of this section indicates a failure to comply, the responsible Administration official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided in § 18.32.

(2) If an investigation does not warrant action pursuant to § 17.32, the responsible Administration official or his designee will so inform the recipient and the complainant, if any, in writing.

(c) *Adjudicative investigation.* An investigation proceeding may be initiated by the Administration prior to the conduct of a hearing under the authority of 42 U.S.C. 3758(b) so the matter may be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means action will be taken as provided for in § 18.33.

(d) *Right to hearing.* No recipient of Federal financial assistance or applicant for such assistance shall be denied access to the hearing or appeal procedures set forth in §§ 18.32 and 18.33 for denial or discontinuance of a grant or withholding of payments thereunder resulting from the application of this subpart.

§ 18.32 Compliance hearing.

Every hearing held under the authority of 42 U.S.C. 3757 shall be known as a "compliance hearing." Such hearing shall be initiated by the Administration if, within ten (10) days after serving a notice of noncompliance by registered mail upon an applicant or grantee, any notified applicant or grantee makes written request to the Administration for a hearing. Otherwise, the opportunity for hearing shall be deemed to have been waived. The Administration is authorized to serve a notice of noncompliance against any applicant or grantee in the following situations: Upon the written request of a subgrantee or subgrant applicant alleging an abuse of a State planning agency's approved hearing and appeal procedures, as promulgated under the provision of 42 U.S.C. 3733(7); or, upon its own initiative, if it decides that there has been a substantial failure to comply with paragraph (a) or (b) of this section. The Administration shall withhold any payments made under Chapter 46 of Title 42 of the United States Code after a waiver of hearing by the applicant or grantee or after a compliance hearing on the merits of the case, if the Administration determines that there has been a substantial failure on the part of the applicant or grantee to comply with and take affirmative action to comply with;

(a) The regulations of the Administration promulgated under Chapter 46 of Title 42 of the United States Code;

(b) Any plan or application submitted under the provisions of Chapter 46 of Title 42 of the United States Code.

Lesser sanctions available to the Administration include: Public disclosure of the failure to comply; injunctive action in the Federal courts; disallowance as a program or project cost of an expenditure that does not conform with LEAA standards; partial denial or cutoff of funds; imposition of additional requirements by special conditions; transfer of the grant to another grantee or other appropriate action. Compliance hearings shall be conducted according to the rules and procedures of this part.

§ 18.33 Adjudicative hearing.

Every hearing held under the authority of 42 U.S.C. 3758(b) shall be known as an "adjudicative hearing" Such hearing may be initiated by an applicant or grantee at any time upon satisfaction of the rules and procedures of this part for the bringing of a claim. However, subgrantees or subgrant applicants may not initiate an adjudicative hearing. An applicant or grantee may initiate an adjudicative hearing only under the following circumstances:

(a) Rejection of an applicant's application; or

(b) Denial of any grant to grantee; or

(c) Reduction of a portion of a grant to a grantee; or

(d) Granting of a lesser amount than the applicant believes to be appropriate under Chapter 46 of Title 42 of the United States Code.

Adjudicative hearings shall be conducted according to the rules and procedures of this part.

§ 18.34 Rehearing.

Every hearing held under the authority of 42 U.S.C. 3758(c) shall be known as a "rehearing." Such hearing may be initiated by an applicant or a grantee after final action under § 18.33 if he makes a written request for a rehearing within thirty (30) days after the issuance of the determinations and findings of fact by the Administration. Otherwise, the right of the applicant or grantee to a rehearing shall be deemed to have been waived. The Administration shall order a rehearing if it finds that the applicant or grantee has presented newly arisen or newly discovered matter which is sufficient to require the conduct of further proceedings on the issue, or the applicant or grantee has shown some defect in the conduct of the initial hearing sufficient to cause substantial unfairness in reaching the result therein. New or modified findings of fact and determinations may be given by the Administration after a rehearing. All rehearings shall be conducted under the rules and procedures of this part which govern adjudicative hearings.

§ 18.35 Hearing upon remand.

Every hearing held under the authority of 42 U.S.C. 3759 shall be known as a "hearing upon remand." Such hearing will be initiated by the Administration upon remand from a court for further proceedings, concerning any final action of the Administration under §§ 18.32 through 18.34 or concerning an application or plan submitted under Chapter 46 of Title 42 of the United States Code. New or modified findings of fact and determinations may be given by the Administration after a hearing upon remand. All hearings upon remand shall be conducted under the rules and procedures which govern compliance hearings.

PLEADINGS

§ 18.41 Request for hearing.

(a) All hearings or rehearings, except for compliance hearings and hearings upon remand shall be initiated by the filing of a request for a hearing with the Administration.

(b) The applicant's or grantee's request shall contain the following:

(1) Recital of the regulation under which the requestor is applying for review; and

(2) A clear and concise factual statement sufficient to inform the Administration with reasonable definiteness of the nature of petitioner's request and of the issues involved.

(3) Recital of relief requested.

§ 18.42 Complaints.

(a) All compliance hearings and all hearings upon remand will be initiated by the issuance and service of a complaint by the Administration upon the applicant or grantee:

(1) In a compliance hearing, the complaint will contain notice to the applicant or grantee of the action to be taken and of his opportunity to request a hearing on the matter and will recite the allegations which form the basis of the complaint;

(2) In a hearing upon remand, the complaint will contain notice to the applicant or grantee of the proposed taking of evidence and of his opportunity to file an answer and will recite allegations based up on the issues remanded by the court.

(b) The applicant or grantee will have thirty (30) days in which to file an answer to the complaint.

(1) *Content of the answer.* If the allegations of fact in the complaint are contested, the applicant or grantee will give a concise statement of the facts constituting each ground of defense, will specifically admit, deny, or explain each fact alleged in the complaint or, if the applicant or grantee is without knowledge thereof, will state that he is without knowledge of the particular fact.

(2) *Motion for a more definite statement.* Where a reasonable showing to the satisfaction of the hearing examiner is made by an applicant or grant-

ee that he cannot frame a responsive answer based on the allegations contained in the complaint, he may move for a more definite statement of allegations by the Administration before he files an answer. Such a motion shall be filed within ten (10) days after service of the complaint and the applicant's or grantee's answer must be filed within ten (10) days after service of a more definite statement of allegations. If the motion for a more definite statement is denied, the applicant or grantee shall file his answer ten (10) days after service of the order of denial or thirty (30) days after service of complaint, whichever is later.

§ 18.43 Notice of hearing.

The filing of a claim by an applicant or grantee under § 18.41 shall constitute adequate and due notice to him under the rules and procedures of this part. The service of a complaint by registered mail on an applicant or grantee under § 18.42 shall constitute adequate and due notice to him under the rules and procedures of this part.

§ 18.44 Prehearing conference.

(a) *When permitted.* The hearing examiner, upon his own motion or upon application of either party, may call upon the parties to appear before him to consider:

(1) Simplification or clarification of the issues;

(2) Stipulations, admissions, agreements on documents, or other understandings which will avoid unnecessary proof;

(3) Limitation of the number of expert witnesses and of other cumulative evidence;

(4) Settlement of all or part of the issues in dispute;

(5) Such other matters as may aid in the disposition of the case;

(b) *Conference record.* The results of the conference shall be reduced to writing by the hearing examiner within five (5) days after the close of the conference. Copies shall be duly served on the parties who may, within ten (10) days from receipt of the written record, file objection, comment, request for correction or other motion pertaining to that record of prehearing conference. The record of prehearing conference together with any objection, comment, request for correction or other motion made by the parties shall become a part of the hearing record.

PROCEDURE FOR HEARINGS, REHEARINGS, AND HEARINGS UPON REMAND

§ 18.51 General rules.

(a) *Public hearings.* All hearings under this part shall be public unless otherwise ordered by the Administration. Prior to the holding of a public hearing, the Administration shall give notice of the hearing to all persons by notice in the FEDERAL REGISTER and by posting announcement of the hearing in a newspaper of general circulation for at least five (5) consecutive days immediately preceding the day of the hearing.

(b) All oral hearings requested under this part shall be held in Washington, D.C., unless the hearing examiner decides that the hearing could be conducted in a more expeditous manner in another location.

(c) *Expedition.* All hearings which are held under this part shall proceed in an expeditious manner. Such hearings shall be held in one place and shall continue without suspension until conclusion, except that a hearing examiner may call reasonable recesses, may order hearings to be held at more than one place when good cause for such action has been shown to the hearing examiner's satisfaction, and may order brief intervals to permit discovery under § 18.56. No other intervals shall be authorized for hearings except as directed by the Administration.

(d) *Rights of parties.* Any party participating in a hearing under this part shall be given reasonable notice and opportunity for hearing, shall be allowed to present evidence on his behalf, shall be able to be represented at every stage of the hearing procedures by qualified counsel.

(e) *Participation.* Any party or any interested person or his representative may be sworn as a witness and heard.

[38 FR 8233, Mar. 30, 1973. Redesignated at 38 FR 8233, Mar. 30, 1973, as amended at 45 FR 54752, July 18, 1980]

§ 18.52 Presiding officials.

(a) *Who presides.* Any duly qualified hearing examiner or any member of the Administration so authorized by the Administration may hold a hearing under this part. The term "hearing examiner" as used in this part means and applies to any member of the Administration when so sitting.

(b) *How assigned.* The presiding hearing examiner shall be designated by the Administration, who shall notify the parties of the hearing examiner designated.

(c) *Powers and duties.* Every hearing examiner shall have all of the following powers and duties:

(1) The power to hold hearings and regulate the course of the hearings and the conduct of the parties and their counsel therein;

(2) The power to sign and issue subpoenas and other orders requiring access;

(3) The power to administer oaths and affirmations;

(4) The power to examine witnesses;

(5) The power to rule on offers of proof and to receive evidence;

(6) The power to take depositions or to cause depositions to be taken when the ends of justice are served;

(7) The power to hold conferences under § 18.44 for the settlement or simplification of the issues or for any other proper purpose;

(8) The power to consider and rule upon procedural requests and other motions, including motions for default;

(9) The duty to conduct fair and impartial hearings;

(10) The duty to maintain order;

(11) The duty to avoid unnecessary delay; and

(12) All powers and duties expressly or impliedly authorized by this part, by Chapter 46 of Title 42 of the United States Code and by the Administrative Procedures Act as restated and incorporated in Title 5 of the United States Code.

(d) *Suspension of counsel by hearing examiner.* The hearing examiner shall have the authority, for good cause stated on the record, to suspend or bar from participation in a particular proceeding and counsel who shall refuse to comply with his directions, or who shall be guilty of disorderly, dilatory, obstructionist, or contumacious conduct, or contemptuous language in the course of such proceeding. Any counsel so suspended or barred shall have an immediate right of appeal to the Administration. Such appeals shall be in the form of a brief not to exceed thirty (30) pages in length and shall be filed within five (5) days after notice of the hearing examiner's action. Answer thereto may be filed within five (5) days after service of the appeal brief. The appeal shall not operate to suspend the hearing unless otherwise ordered by the hearing examiner or the Administration; in the event the hearing is not suspended, the counsel may continue to participate therein pending disposition of the appeal.

(e) *Disqualification of hearing examiner.* (1) When a hearing examiner deems himself disqualified to preside in a particular proceeding, he shall withdraw therefrom by giving notice on the record and shall notify the Administration of such withdrawal.

(2) Whenever any party shall deem the hearing examiner for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, such party may file with the Administration a motion to disqualify and remove the hearing examiner, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. A copy of the motion shall be served by the Administration on the hearing examiner whose removal is sought, and the hearing examiner shall have ten (10) days from such service within which to reply. If the hearing examiner does not disqualify himself within the ten (10) days within which he may reply, then the Administration shall promptly determine the validity of the grounds alleged, either directly or on the report of another hearing examiner appointed to conduct a hearing for that purpose.

(f) *Failure to comply with a hearing examiner's directions.* Any party who refuses or fails to comply with a lawfully issued order or directive of a hearing examiner may be considered to be in contempt of the Administration. The circumstances of any such neglect, refusal, or failure, together with a recommendation for appropriate action, shall be promptly forwarded by the hearing examiner to the Administration. The Administration may take such action in regard thereto as it feels the circumstances may warrant.

§ 18.53 Evidence and record.

(a) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5-8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in § 18.43 of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Administration and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(b) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

§ 18.54 Motions.

(a) Presentation and dispositions: During the time a proceeding is before a hearing examiner, all motions therein, except those filed under § 18.52(e)(2), shall be addressed to the hearing examiner and, if within his authority, shall be ruled upon by him. Any motion upon which the hearing examiner has no authority to rule shall be certified by him to the Administration with his recommendation. All written motions shall be filed with the office in which the proceeding was initiated and all motions addressed to the Administration shall be in writing.

(b) Content: All written motions shall state the particular order, ruling, or action desired and the grounds therefor.

(c) Within ten (10) days after service of any written motion, or within such longer or shorter time as may be designated by the hearing examiner or the Administration, the opposing party shall answer or shall be deemed to have consented to the granting of the relief asked for in the motion. The moving party shall have no right to reply, except as permitted by the hearing examiner or the Administration.

(d) Rulings on motions: All rulings on motions shall be made only after giving all parties a reasonable opportunity to make a statement on their behalf.

§ 18.55 Discovery.

(a) *Dispositions*—(1) *When justified.* At any time after the initiation of the proceeding, whether or not the issue has been joined, the hearing examiner, at his discretion, may order by subpoena the taking of a deposition and the production of documents by the deponent. Such order may be entered upon a showing that the deposition is necessary for discovery purposes, and that such discovery could not be accomplished by voluntary methods. Such an order may also be entered in extraordinary circumstances to preserve relevant evidence upon a showing that there is substantial reason to believe that such evidence could not be presented through a witness at the hearing. The decisive factors for a determination under this subsection, however, shall be fairness to all parties and the requirements of due process. Depositions may be taken orally or upon written questions before any person having power to administer oaths who may be designated by the hearing examiner.

(2) *Form of application.* Any party desiring to take a deposition shall make application in writing to the hearing examiner, setting forth the justification therefor, the time when, the place where, and the name and address of each proposed deponent and the subject matter concerning which each is expected to depose, and shall, at this time, request any subpoenas which are desired to effect the deposition. The hearing examiner shall then issue a notice of subpoena to the person to be deposed.

(3) *Ruling on the application.* Such order as the hearing examiner may issue for taking a deposition shall state the circumstances warranting its being taken and shall designate the time when, the place where, and the name and address of the officer before whom the deposition is desired. The time designated shall allow not less than five (5) days from the date of service of the order, when the deposition is to taken within the United States, and not less than fifteen (15) days, when the deposition is to be taken elsewhere.

(4) *Modification of ruling.* Upon a motion, within ten (10) days after service of the notice of subpoena, by any party or by the person to be deposed and after a showing of good cause, the hearing examiner may order that the deposition shall not be taken, that certain matters not be inquired into, or may make any other order which justice requires to protect the party or deponent from the unnecessary disclosure or publication of information contrary to the public interest or beyond the requirements of justice in the particular proceeding.

(5) *Taking a deposition.* Each deponent shall be duly sworn, and any adverse party shall have the right to cross-examine. Objections to questions or documents shall be in short form, stating the grounds of objections relied upon. The questions propounded and the answers thereto, together with all objections made (but not including argument or debate), shall be reduced to writing and certified by the officer before whom the deposition was taken. Thereafter, the officer shall forward the deposition and one (1) copy thereof to the party at whose instance the deposition was taken and shall forward one (1) copy thereof to the representative of each other party who was present or represented at the taking of the deposition.

(6) *Admissions.* A deposition or any part thereof may be admitted into evidence as against any party who was present or represented at the taking of the deposition or who had due notice thereof, if the hearing examiner finds: (i) That the deponent is dead; (ii) that the deponent is out of the United States or is located at such a distance that his attendance would be impractical, unless it appears that the absence of the deponent was procured by the party offering the deposition; (iii) that the deponent is unable to attend or testify because of age, sickness, infirmity, or imprisonment; (iv) that the party offering the deposition has been unable to procure the attendance of the deponent by subpoena; or (v) that there are good and sufficient reasons for such admission and that the admission of the evidence would be fair as to adverse parties and in accordance with elementary principles of due process for all parties. In all cases, the admission of such testimony shall occur only after adequate notice and opportunity for argument have been given to all parties.

(b) *Interrogatories to the parties*—(1) *Availability.* Any party may serve upon any other party written interrogatories to be answered by the party served, or by an authorized representative of the party if the party served is a corporate or governmental entity. The party served shall also furnish all information which is available to him. Interrogatories shall not be served until after the applicant's or grantee's claim or answer has been filed.

(2) *Form of interrogatories and responses.* The interrogatories shall be addressed to the party or to his authorized representative and may be served on the party, his authorized representative, or his attorney. Each interrogatory shall be answered separately and fully in writing under oath by the party addressed or by his authorized representative. Responses to

the interrogatories must be filed with the Administration and a copy served upon the other party within ten (10) days after service of the interrogatories unless objection is made to such interrogatories. In the case of objections, the answering party shall have ten (10) days after service of the interrogatories or five (5) days after the issuance of the hearing examiner's ruling, whichever is later, to file the interrogatories. The answers are to be signed by the person making them.

(3) *Rulings.* Within ten (10) days after the service of the written interrogatories, the parties served must file objections with the hearing examiner to the interrogatories or waive any objection thereto. The hearing examiner may, after a showing of good cause, limit or refuse to allow the interrogatories, in whole or in part, if he finds that the information called for would be privileged, irrelevant, or otherwise improper or that the requirement of a response would result in the unnecessary disclosure or publication of information contrary to the public interest or beyond the requirements of justice in a particular proceeding.

(c) *Subpoenas*—(1) *Subpoenas ad testificandum.* Application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition or at a hearing, rehearing, or a hearing upon remand shall be made to the hearing examiner.

(2) *Subpoenas duces tecum.* (i) Application for issuance of a subpoena requiring a person to appear and depose or testify and to produce specified documents, papers, books, or other physical exhibits at the taking of a deposition, or at a prehearing conference, or at a hearing, rehearing, or hearing upon remand shall be made in writing to the hearing examiner and shall specify as exactly as possible the material to be reproduced, showing the general relevancy of the material and the reasonableness of the scope of the subpoena.

(ii) Subpoenas duces tecum may be used by any party for purposes of discovery of nonprivileged documents, papers, books, or other physical exhibits relevant for use in evidence, or for obtaining copies of such materials, or for both purposes.

(iii) Upon receipt of an application for subpoena duces tecum, the hearing examiner shall issue a notice of subpoena to the party or person to be deposed. Within ten (10) days after service of the notice of subpoena, the persons or parties served must file objections with the hearing examiner to the subpoenas or waive any objections thereto. The hearing examiner may, after a showing of good cause, refuse to issue a subpoena if he finds that the information called for would be privileged, irrelevant, or otherwise improper or that the issuance of a subpoena would result in the unnecessary disclosure of publication of information contrary to the public interest or beyond the requirements of justice in a particular proceeding.

(d) *Appeals.* Appeals from rulings given by a hearing examiner under the provisions of this part will be entertained by the Administration only upon a showing that the ruling complained of involved substantial rights and will materially affect the final decision, and that a determination of its correctness before conclusion of the hearing is essential to serve the interests of justice. Such appeals shall be made on the record and shall be in the form of a brief not to exceed thirty (30) pages in length and shall be filed within five (5) days after notice of the ruling complained of. Answer to any such appeal may be filed within five (5) days after service of the appeal brief. The appeal shall not operate to suspend the hearing unless otherwise ordered by the hearing examiner or the Administration.

§ 18.56 Proposed findings, conclusions, and order.

At the close of the reception of evidence, or within a reasonable time thereafter, the hearing examiner will submit his proposed findings of fact, conclusions of law, and ruling or order, together with reasons therefor and briefs in support thereof. Such proposals shall be in writing, shall be served upon all parties, shall contain adequate references to the record and authorities relied on, and shall constitute the hearing examiner's recommendations for the purposes of this part.

§ 18.57 Action by the Administration.

Upon receipt of the recommendations of the hearing examiner, the Administration will review the proceedings pursuant to § 18.7. Before a determination of finding of fact is made by the Administration, the parties shall be given an opportunity to submit, within thirty (30) days after the date of the submission of the hearing examiner's recommendations, for Administration consideration:

(a) Proposed findings and determinations; or

(b) Exceptions to the recommendations of the hearing examiner; and

(c) Supporting reasons for the exceptions or proposed findings or determinations.

PROCEDURE FOR INVESTIGATIONS

§ 18.61 Generally.

An administrative investigation proceeding under § 18.31 may be held anywhere in the United States, at the discretion of the Administration.

§ 18.62 Conduct of proceedings.

The overriding requirement in the administrative investigation under § 18.31 will be fairness to all parties. The procedure will be informal, and all evidence which is not irrelevant, immaterial, or cumulative will be examined. The investigator shall have the power to use the provisions of § 18.55 to compel the presentation of information. An applicant or grantee may present written evidence and exhibits, at his discretion, but may not appear before the administrative investigation in person or by personal representative unless permitted by the investigator conducting the proceeding. The sole inquiry of the administrative investigation under § 18.31 will be whether or not to hold further administrative proceedings concerning the application or grant at issue.

DETERMINATIONS AND FINDINGS OF FACT

§ 18.71 Generally.

Any determination or finding of fact by the Administration shall constitute final action on the question. The recommendations of a hearing examiner or an investigator shall become determinations and findings of fact upon written acceptance, rejection, or modification by the Administration after review under the Administration's rules and regulations. Determinations and findings of fact may not, however, modify or abridge a party's right to any proceeding authorized by this part or by Chapter 46 of Title 42 of the U.S. Code.

§ 18.72 Finality of the proceedings.

Determinations and findings of fact made by the Administration shall be final and conclusive, if supported by substantial evidence, upon all applicants or grantees in a compliance hearing under § 18.32 or in an adjudicative hearing under § 18.33 (except that a subsequent hearing shall constitute a trial de novo on the facts) in a rehearing under § 18.34, or in a hearing under a petition for judicial review, except that the Administration may make new or modified findings or determinations pursuant to 42 U.S.C. 3759(b) upon remand from a court. Such new or modified findings or determinations, when filed in the remanding court, shall likewise be final and conclusive, if supported by substantial evidence.

§ 18.73 Limitation of the hearing examiner's authority.

A hearing examiner may reopen a proceeding at any time prior to his submission of recommendations to the Administration. After submission of his recommendations, the hearing examiner's jurisdiction is terminated, except for the correction of clerical errors. However, the Administration, at its own discretion, may remand a proceeding to a hearing examiner for further inquiry after the presentation of recommendations and before the making of determinations and findings of fact.

§ 18.80 Effect on other regulations.

Nothing in this procedure shall be deemed to supersede any provisions of Subparts B, C, and D of Part 42 of this title or any other regulation or instruction issued by the Department of Justice pursuant to 42 U.S.C. 2000d. However, to the extent there is no conflict with said provisions this section may be used as an aid in the conduct of any hearing under Subparts B, C, and D of Part 42 of this title.

PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

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APPENDIX—COMMENTARY ON SELECTED SECTIONS OF THE REGULATIONS ON CRIMINAL HISTORY RECORD INFORMATION SYSTEMS

AUTHORITY: Pub. L. 93-83, 87 Stat. 197, (42 U.S.C. 3701, et seq.; 28 U.S.C. 534), Pub. L. 92-544, 86 Stat. 1115.

SOURCE: Order No. 601-75, 40 FR 22114, May 20, 1975, unless otherwise noted.

NOMENCLATURE CHANGE: 45 FR 40114, June 13, 1980.

Subpart A—General Provisions

SOURCE: 41 FR 11714, Mar. 19, 1976, unless otherwise noted.

§ 20.1 Purpose.

It is the purpose of these regulations to assure that criminal history record information wherever it appears is collected, stored, and disseminated in a manner to insure the completeness, integrity, accuracy and security of such information and to protect individual privacy.

§ 20.2 Authority.

These regulations are issued pursuant to sections 501 and 524(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973, Pub. L. 93-83, 87 Stat. 197, 42 U.S.C. 3701, *et seq.* (Act), 28 U.S.C. 534, and Pub. L. 92-544, 86 Stat. 1115.

§ 20.3 Definitions.

As used in these regulations:

(a) "Criminal history record information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information.

(b) "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. State and Federal Inspector General Offices are included.

(c) "Criminal justice agency" means: (1) Courts; (2) a government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

(d) The "administration of criminal justice" means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information. State and Federal Inspector General Offices are included.

(e) "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination in the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions shall include, but not be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed—civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial—defendant discharged, executive clemency, placed on probation, paroled, or released from correctional supervision.

(f) "Statute" means an Act of Congress or State legislature of a provision of the Constitution of the United States or of a State.

(g) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(h) An "executive order" means an order of the President of the United States or the Chief Executive of a State which has the force of law and which is published in a manner permitting regular public access thereto.

(i) "Act" means the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. 3701, *et seq.*, as amended.

(j) "Department of Justice criminal history record information system" means the Identification Division and the Computerized Criminal History File systems operated by the Federal Bureau of Investigation.

(k) "Nonconviction data" means arrest information without disposition if an interval of one year has elapsed from the date of arrest and no active prosecution of the charge is pending; or information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals.

(l) "Direct access" means having the authority to access the criminal history record data base, whether by manual or automated methods.

[41 FR 11714, Mar. 19, 1976, as amended at 45 FR 40114, June 13, 1980; Order No. 960-81, 46 FR 52357, Oct. 27, 1981]

Subpart B—State and Local Criminal History Record Information Systems

SOURCE: 41 FR 11715, Mar. 19, 1976, unless otherwise noted.

§ 20.20 Applicability.

(a) The regulations in this subpart apply to all State and local agencies and individuals collecting, storing, or disseminating criminal history record information processed by manual or automated operations where such collection, storage, or dissemination has been funded in whole or in part with funds made available by the Law Enforcement Assistance Administration subsequent to July 1, 1973, pursuant to Title I of the Act. Use of information obtained from the FBI Identification Division or the FBI/NCIC system shall also be subject to limitations contained in Subpart C.

(b) The regulations in this subpart shall not apply to criminal history record information contained in: (1) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons; (2) original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long standing custom to be made public, if such records are organized on a chronological basis; (3) court records of public judicial proceedings; (4) published court or administrative opinions or public judicial, administrative or legislative proceedings; (5) records of traffic offenses maintained by State departments of transportation, motor vehicles or the equivalent thereof for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's or other operators' licenses; (6) announcements of executive clemency.

(c) Nothing in these regulations prevents a criminal justice agency from disclosing to the public criminal history record information related to the offense for which an individual is currently within the criminal justice system. Nor is a criminal justice agency prohibited from confirming prior criminal history record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted, or whether an information or other formal charge was filed, on a specified date, if the arrest record information or criminal record information disclosed is based on data excluded by paragraph (b) of this section. The regulations do not prohibit the dissemination of criminal history record information for purposes of international travel, such as issuing visas and granting of citizenship.

§ 20.21 Preparation and submission of a Criminal History Record Information Plan.

A plan shall be submitted to OJARS by each State on March 16, 1976, to set forth all operational procedures, except those portions relating to dissemination and security. A supplemental plan covering these portions shall be submitted no later than 90 days after promulgation of these amended regulations. The plan shall set forth operational procedures to—

(a) *Completeness and accuracy.* Insure that criminal history record information is complete and accurate.

(1) Complete records should be maintained at a central State repository. To be complete, a record maintained at a central State repository which contains information that an individual has been arrested, and which is available for dissemination, must contain information of any dispositions occurring within the State within 90 days after the disposition has occurred. The above shall apply to all arrests occurring subsequent to the effective date of these regulations. Procedures shall be established for criminal justice agencies to query the central repository prior to dissemination of any criminal history record information unless it can be assured that the most up-to-date disposition data is being used. Inquiries of a central State repository shall be made prior to any dissemination except in those cases where time is of the essence and the repository is technically incapable of responding within the necessary time period.

(2) To be accurate means that no record containing criminal history record information shall contain erroneous information. To accomplish this end, criminal justice agencies shall institute a process of data collection, entry, storage, and systematic audit that will minimize the possibility of recording and storing inaccurate information and upon finding inaccurate information of a material nature, shall notify all criminal justice agencies known to have received such information.

(b) *Limitations on dissemination.* Insure that dissemination of nonconviction data has been limited, whether directly or through any intermediary only to:

(1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment;

(2) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate State or local officials or agencies;

(3) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. The agreement shall specifically authorize access to data, limit the use of data to purposes for which given, insure the security and confidentiality of the data consistent with these regulations, and provide sanctions for violation thereof;

(4) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, insure the confidentiality and security of the data consistent with these regulations and with section 524(a) of the Act and any regulations implementing section 524(a), and provide sanctions for the violation thereof. These dissemination limitations do not apply to conviction data.

(c) *General policies on use and dissemination.* (1) Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.

(2) No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.

(3) Subsection (b) does not mandate dissemination of criminal history record information to any agency or individual. States and local governments will determine the purposes for which dissemination of criminal history record information is authorized by State law, executive order, local ordinance, court rule, decision or order.

(d) *Juvenile records.* Insure that dissemination of records concerning proceedings relating to the adjudication of a juvenile as delinquent or in need or supervision (or the equivalent) to noncriminal justice agencies is prohibited, unless a statute, court order, rule or court decision specifically authorizes dissemination of juvenile records, except to the same extent as criminal history records may be disseminated as provided in § 20.21(b) (3) and (4).

(e) *Audit.* Insure that annual audits of a representative sample of State and local criminal justice agencies chosen on a random basis shall be conducted by the State to verify adherence to these regulations and that appropriate records shall be retained to facilitate such audits. Such records shall include, but are not limited to, the names of all persons or agencies to whom information is disseminated and the date upon which such information is disseminated. The reporting of a criminal justice transaction to a State, local or Federal repository is not a dissemination of information.

(f) *Security.* Wherever criminal history record information is collected, stored, or disseminated, each State shall insure that the following requirements are satisfied by security standards established by State legislation, or in the absence of such legislation, by regulations approved or issued by the Governor of the State.

(1) Where computerized data processing is employed, effective and technologically advanced software and hardware designs are instituted to prevent unauthorized access to such information.

(2) Access to criminal history record information system facilities, systems operating environments, data file contents whether while in use or when stored in a media library, and system documentation is restricted to authorized organizations and personnel.

(3)(i) Computer operations, whether dedicated or shared, which support criminal justice information systems, operate in accordance with procedures developed or approved by the participating criminal justice agencies that assure that:

(*a*) Criminal history record information is stored by the computer in such manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by non-criminal justice terminals.

(*b*) Operation programs are used that will prohibit inquiry, record updates, or destruction of records, from any terminal other than criminal justice system terminals which are so designated.

(*c*) The destruction of records is limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information.

(*d*) Operational programs are used to detect and store for the output of designated criminal justice agency employees all unauthorized attempts to penetrate any criminal history record information system, program or file.

(*e*) The programs specified in paragraphs (f)(3)(i)(*b*) and (*d*) of this section are known only to criminal justice agency employees responsible for criminal history record information system control or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and the program(s) are kept continuously under maximum security conditions.

(*f*) Procedures are instituted to assure that an individual or agency authorized direct access is responsible for (*1*) the physical security of criminal history record information under its control or in its custody and (*2*) the protection of such information from unauthorized access, disclosure or dissemination.

(*g*) Procedures are instituted to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.

(ii) A criminal justice agency shall have the right to audit, monitor and inspect procedures established above.

(4) The criminal justice agency will:

(i) Screen and have the right to reject for employment, based on good cause, all personnel to be authorized to have direct access to criminal history record information.

(ii) Have the right to initiate or cause to be initiated administrative action leading to the transfer or removal of personnel authorized to have direct access to such information where such personnel violate the provisions of these regulations or other security requirements established for the collection, storage, or dissemination of criminal history record information.

(iii) Institute procedures, where computer processing is not utilized, to assure that an individual or agency authorized direct access is responsible for (*a*) the physical security of criminal history record information under its control or in its custody and (*b*) the protection of such information from unauthorized access, disclosure, or dissemination.

(iv) Institute procedures, where computer processing is not utilized, to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.

(v) Provide that direct access to criminal history record information shall be available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system.

(5) Each employee working with or having access to criminal history record information shall be made familiar with the substance and intent of these regulations.

(g) *Access and review.* Insure the individual's right to access and review of criminal history information for purposes of accuracy and completeness by instituting procedures so that—

(1) Any individual shall, upon satisfactory verification of his identity, be entitled to review without undue burden to either the criminal justice agency or the individual, any criminal history record information maintained about the individual and obtain a copy thereof when necessary for the purpose of challenge or correction;

(2) Administrative review and necessary correction of any claim by the individual to whom the information relates that the information is inaccurate or incomplete is provided;

(3) The State shall establish and implement procedures for administrative appeal where a criminal justice agency refuses to correct challenged information to the satisfaction of the individual to whom the information relates;

(4) Upon request, an individual whose record has been corrected shall be given the names of all non-criminal

justice agencies to whom the data has been given;

(5) The correcting agency shall notify all criminal justice recipients of corrected information; and

(6) The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigatory, or other related files and shall not be construed to include any other information than that defined by § 20.3(b).

[41 FR 11715, Mar. 19, 1976, as amended at 42 FR 61595, Dec. 6, 1977]

§ 20.22 Certification of Compliance.

(a) Each State to which these regulations are applicable shall with the submission of its plan provide a certification that to the maximum extent feasible action has been taken to comply with the procedures set forth in the plan. Maximum extent feasible, in this subsection, means actions which can be taken to comply with the procedures set forth in the plan that do not require additional legislative authority or involve unreasonable cost or do not exceed existing technical ability.

(b) The certification shall include—

(1) An outline of the action which has been instituted. At a minimum, the requirements of access and review under § 20.21(g) must be completely operational;

(2) A description of any legislation or executive order, or attempts to obtain such authority that has been instituted to comply with these regulations;

(3) A description of the steps taken to overcome any fiscal, technical, and administrative barriers to the development of complete and accurate criminal history record information;

(4) A description of existing system capability and steps being taken to upgrade such capability to meet the requirements of these regulations; and

(5) A listing setting forth categories of non-criminal justice dissemination. See § 20.21(b).

§ 20.23 Documentation: Approval by OJARS.

Within 90 days of the receipt of the plan, OJARS shall approve or disapprove the adequacy of the provisions of the plan and certification. Evaluation of the plan by OJARS will be based upon whether the procedures set forth will accomplish the required objectives. The evaluation of the certification(s) will be based upon whether a good faith effort has been shown to initiate and/or further compliance with the plan and regulations. All procedures in the approved plan must be fully operational and implemented by March 1, 1978. A final certification shall be submitted in March 1, 1978.

Where a State finds it is unable to provide final certification that all required procedures as set forth in § 20.21 will be operational by March 1, 1978, a further extension of the deadline will be granted by OJARS upon a showing that the State has made a good faith effort to implement these regulations to the maximum extent feasible. Documentation justifying the request for the extension including a proposed timetable for full compliance must be submitted to OJARS by March 1, 1978. Where a State submits a request for an extension, the implementation date will be extended an additional 90 days while OJARS reviews the documentation for approval or disapproval. To be approved, such revised schedule must be consistent with the timetable and procedures set out below:

(a) July 31, 1978—Submission of certificate of compliance with:

(1) Individual access, challenge, and review requirements;

(2) Administrative security;

(3) Physical security to the maximum extent feasible.

(b) Thirty days after the end of a State's next legislative session—Submission to OJARS of a description of State policy on dissemination of criminal history record information.

(c) Six months after the end of a State's legislative session—Submission to OJARS of a brief and concise description of standards and operating procedures to be followed by all criminal justice agencies covered by OJARS regulations in complying with the State policy on dissemination.

(d) Eighteen months after the end of a State's legislative session—Submission to OJARS of a certificate attesting to the conduct of an audit of the State central repository and of a random number of other criminal justice agencies in compliance with OJARS regulations.

[41 FR 11715, Mar. 19, 1976, as amended at 42 FR 61596, Dec. 6, 1977]

§ 20.24 State laws on privacy and security.

Where a State originating criminal history record information provides for sealing or purging thereof, nothing in these regulations shall be construed to prevent any other State receiving such information, upon notification, from complying with the originating State's sealing or purging requirements.

§ 20.25 Penalties.

Any agency or individual violating Subpart B of these regulations shall be subject to a fine not to exceed $10,000. In addition, OJARS may initiate fund cut-off procedures against recipients of OJARS assistance.

Subpart C—Federal System and Interstate Exchange of Criminal History Record Information

§ 20.30 Applicability.

The provisions of this subpart of the regulations apply to any Department of Justice criminal history record information system that serves criminal justice agencies in two or more states and to Federal, state and local criminal justice agencies to the extent that they utilize the services of Department of Justice criminal history record information systems. These regulations are applicable to both manual and automated systems.

§ 20.31 Responsibilities.

(a) The Federal Bureau of Investigation (FBI) shall operate the National Crime Information Center (NCIC), the computerized information system which includes telecommunications lines and any message switching facilities which are authorized by law or regulation to link local, state and Federal criminal justice agencies for the purpose of exchanging NCIC-related information. Such information includes information in the Computerized Criminal History (CCH) File, a cooperative Federal-State program for the interstate exchange of criminal history record information. CCH shall provide a central repository and index of criminal history record information for the purpose of facilitating the interstate exchange of such information among criminal justice agencies.

(b) The FBI shall operate the Identification Division to perform identification and criminal history record information functions for Federal, state and local criminal justice agencies, and for noncriminal justice agencies and other entities where authorized by Federal statute, state statute pursuant to Pub. L. 92-544 (86 Stat. 1115), Presidential executive order, or regulation of the Attorney General of the United States.

(c) The FBI Identification Division shall maintain the master fingerprint files on all offenders included in the NCIC/CCH File for the purposes of determining first offender status and to identify those offenders who are unknown in states where they become criminally active but known in other states through prior criminal history records.

§ 20.32 Includable offenses.

(a) Criminal history record information maintained in any Department of Justice criminal history record information system shall include serious and/or significant offenses.

(b) Excluded from such a system are arrests and court actions limited only to nonserious charges, e.g., drunkenness, vagrancy, disturbing the peace, curfew violation, loitering, false fire alarm, non-specific charges of suspicion or investigation, traffic violations (except data will be included on arrests for manslaughter, driving under the influence of drugs or liquor, and hit and run). Offenses committed by juvenile offenders shall also be excluded unless a juvenile offender is tried in court as an adult.

(c) The exclusions enumerated above shall not apply to Federal manual criminal history record information collected, maintained and compiled by the FBI prior to the effective date of these Regulations.

§ 20.33 Dissemination of criminal history record information.

(a) Criminal history record information contained in any Department of Justice criminal history record information system will be made available:

(1) To criminal justice agencies for criminal justice purposes; and

(2) To Federal agencies authorized to receive it pursuant to Federal statute or Executive order.

(3) Pursuant to Pub. L. 92-544 (86 Stat. 115) for use in connection with licensing or local/state employment or for other uses only if such dissemination is authorized by Federal or state statutes and approved by the Attorney General of the United States. When no active prosecution of the charge is known to be pending arrest data more than one year old will not be disseminated pursuant to this subsection unless accompanied by information relating to the disposition of that arrest.

(4) For issuance of press releases and publicity designed to effect the apprehension of wanted persons in connection with serious or significant offenses.

(b) The exchange of criminal history record information authorized by paragraph (a) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

(c) Nothing in these regulations prevents a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates.

§ 20.34 Individual's right to access criminal history record information.

(a) Any individual, upon request, upon satisfactory verification of his identity by fingerprint comparison and upon payment of any required processing fee, may review criminal history record information maintained about him in a Department of Justice criminal history record information system.

(b) If, after reviewing his identification record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, corrections or updating of the alleged deficiency, he should make application directly to the agency which contributed the questioned information. The subject of a record may also direct his challenge as to the accuracy or completeness of any entry on his record to the Assistant Director of the FBI Identification Division, Washington, D.C. 20537. The FBI will then forward the challenge to the agency which submitted the data requesting that agency to verify or correct the challenged entry. If the contributing agency corrects the record, it shall promptly notify the FBI and, upon receipt of such a notification, the FBI will make any changes necessary in accordance with the correction supplied by the contributor of the original information.

[Order No. 601-75, 40 FR 22114, May 20, 1975, as amended by Order No. 805-78, 43 FR 50173, Oct. 27, 1978]

§ 20.35 National Crime Information Center Advisory Policy Board.

There is established an NCIC Advisory Policy Board whose purpose is to recommend to the Director, FBI, general policies with respect to the philosophy, concept and operational principles of NCIC, particularly its relationships with local and state systems relating to the collection, processing, storage, dissemination and use of criminal history record information contained in the CCH File.

(a)(1) The Board shall be composed of twenty-six members, twenty of whom are elected by the NCIC users from across the entire United States and six who are appointed by the Director of the FBI. The six appointed members, two each from the judicial, the corrections and the prosecutive sectors of the criminal justice community, shall serve for an indeterminate period of time. The twenty elected members shall serve for a term of two years commencing on January 5th of each odd numbered year.

(2) The Board shall be representative of the entire criminal justice community at the state and local levels and shall include representation from law enforcement, the courts and corrections segments of this community.

(b) The Board shall review and consider rules, regulations and procedures for the operation of the NCIC.

(c) The Board shall consider operational needs of criminal justice agencies in light of public policies, and local, state and Federal statutes and these Regulations.

(d) The Board shall review and consider, on a continuing basis, security and privacy aspects of the NCIC system and shall, as needed, appoint ad hoc subcommittees to provide information and recommendations to the Board concerning security and privacy of the NCIC system.

(e) The Board shall recommend standards for participation by criminal justice agencies in the NCIC system.

(f) The Board shall report directly to the Director of the FBI or his designated appointee.

(g) The Board shall operate within the purview of the Federal Advisory Committee Act, Pub. L. 92-463, 86 Stat. 770.

(h) The Director, FBI, shall not adopt recommendations of the Board which would be in violation of these Regulations.

(28 U.S.C. 509, 510 ,534; 5 U.S.C. 301)

[Order No. 601-75, 40 FR 22114, May 20, 1975, as amended by Order No. 819-79, 44 FR 12031, Mar. 5, 1979]

§ 20.36 Participation in the Computerized Criminal History Program.

(a) For the purpose of acquiring and retaining direct access to CCH File each criminal justice agency shall execute a signed agreement with the Director, FBI, to abide by all present rules, policies and procedures of the NCIC, as well as any rules, policies and procedures hereinafter approved by the NCIC Advisory Policy Board and adopted by the NCIC.

(b) Entry of criminal history record information into the CCH File will be accepted only from an authorized state or Federal criminal justice control terminal. Terminal devices in other authorized criminal justice agencies will be limited to inquiries.

§ 20.37 Responsibility for accuracy, completeness, currency.

It shall be the responsibility of each criminal justice agency contributing data to any Department of Justice criminal history record information system to assure that information on individuals is kept complete, accurate and current so that all such records shall contain to the maximum extent feasible dispositions for all arrest data included therein. Dispositions should be submitted by criminal justice agencies within 120 days after the disposition has occurred.

§ 20.38 Sanction for noncompliance.

The services of Department of Justice criminal history record information systems are subject to cancellation in regard to any agency or entity which fails to comply with the provisions of Subpart C.

APPENDIX—COMMENTARY ON SELECTED SECTIONS OF THE REGULATIONS ON CRIMINAL HISTORY RECORD INFORMATION SYSTEMS

Subpart A—§ 20.3(b). The definition of criminal history record information is intended to include the basic offender-based transaction statistics/computerized criminal history. (OBTS/CCH) data elements. If notations of an arrest, disposition, or other formal criminal justice transactions occur in records other than the traditional "rap sheet" such as arrest reports, any criminal history record information contained in such reports comes under the definition of this subsection.

The definition, however, does not extend to other information contained in criminal justice agency reports. Intelligence or investigative information (e.g., suspected criminal activity, associates, hangouts, financial information, ownership of property and vehicles) is not included in the definition of criminal history information.

§ 20.3(c). The definitions of criminal justice agency and administration of criminal justice of § 20.3(c) must be considered together. Included as criminal justice agencies would be traditional police, courts, and corrections agencies as well as subunits of noncriminal justice agencies performing a function of the administration of criminal justice pursuant to Federal or State statute or executive order. The above subunits of noncriminal justice agencies would include for example, the Office of Investigation of the U.S. Department of Agriculture which has as its principal function the collection of evidence for criminal prosecutions of fraud. Also included under the definition of criminal justice agency are umbrella-type administrative agencies supplying criminal history information services such as New York's Division of Criminal Justice Services.

§ 20.3(e). Disposition is a key concept in section 524(b) of the Act and in § 20.21(a)(1) and § 20.21(b). It, therefore is defined in some detail. The specific dispositions listed in this subsection are examples only and are not to be construed as excluding other unspecified transactions concluding criminal proceedings within a particular agency.

§ 20.3(k). The different kinds of acquittals and dismissals as delineated in § 20.3(e) are all considered examples of nonconviction data.

Subpart B—§ 20.20(a). These regulations apply to criminal justice agencies receiving funds under the Omnibus Crime Control and Safe Streets Act for manual or automated systems subsequent to July 1, 1973. In the hearings on the regulations, a number of those testifying challenged LEAA's authority to promulgate regulations for manual systems by contending that section 524(b) of the Act governs criminal history information contained in automated systems.

The intent of section 524(b), however, would be subverted by only regulating automated systems. Any agency that wished to circumvent the regulations would be able to create duplicate manual files for purposes contrary to the letter and spirit of the regulations.

Regulation of manual systems, therefore, is authorized by section 524(b) when coupled with section 501 of the Act which authorizes the Administration to establish rules and regulations "necessary to the exercise of its functions * * *."

The Act clearly applies to all criminal history record information collected, stored, or disseminated with LEAA support subsequent to July 1, 1973.

Limitations as contained in Subpart C also apply to information obtained from the FBI Identification Division or the FBI/NCIC System.

§ 20.20 (b) and (c). Section 20.20 (b) and (c) exempts from regulations certain types of records vital to the apprehension of fugitives, freedom of the press, and the public's right to know. Court records of public judicial proceedings are also exempt from the provisions of the regulations.

Section 20.20(b)(2) attempts to deal with the problem of computerized police blotters. In some local jursidictions, it is apparently possible for private individuals and/or newsmen upon submission of a specific name to obtain through a computer search of the blotter a history of a person's arrests. Such files create a partial criminal history data bank potentially damaging to individual privacy, especially since they do not contain final dispositions. By requiring that such records be accessed solely on a chronological basis, the regulations limit inquiries to specific time periods and discourage general fishing expeditions into a person's private life.

Subsection 20.20(c) recognizes that announcements of ongoing developments in the criminal justice process should not be precluded from public disclosure. Thus, announcements of arrest, convictions, new developments in the course of an investigation may be made. It is also permissible for a criminal justice agency to confirm certain matters of public record information upon specific inquiry. Thus, if a question is raised: "Was X arrested by your agency on January 3, 1975" and this can be confirmed or denied by looking at one of the records enumerated in subsection (b) above, then the criminal justice agency may respond to the inquiry. Conviction data as stated in § 20.21(b) may be disseminated without limitation.

§ 20.21. The regulations deliberately refrain from specifying who within a State should be responsible for preparing the plan. This specific determination should be made by the Governor. The State has 90 days from the publication of these revised regulations to submit the portion of the plan covering §§ 20.21(b) and 20.21(f).

§ 20.21(a)(1). Section 524(b) of the Act requires that LEAA insure criminal history information be current and that, to the maximum extent feasible, it contain disposition as well as current data.

It is, however, economically and administratively impractical to maintain complete criminal histories at the local level. Arrangements for local police departments to keep track of dispositions by agencies outside of the local jurisdictions generally do not exist. It would, moreover, be bad public policy to encourage such arrangements since it would result in an expensive duplication of files.

The alternatives to locally kept criminal histories are records maintained by a central State repository. A central State repository is a State agency having the function pursuant to a statute or executive order of maintaining comprehensive statewide criminal history record information files. Ultimately, through automatic data processing the State level will have the capability to handle all requests for in-State criminal history information.

Section 20.20(a)(1) is written with a centralized State criminal history repository in

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mind. The first sentence of the subsection states that complete records should be retained at a central State repository. The word "should" is permissive; it suggests but does not mandate a central State repository.

The regulations do require that States establish procedures for State and local criminal justice agencies to query central State repositories wherever they exist. Such procedures are intended to insure that the most current criminal justice information is used.

As a minimum, criminal justice agencies subject to these regulations must make inquiries of central State repositories whenever the repository is capable of meeting the user's request within a reasonable time. Presently, comprehensive records of an individual's transactions within a State are maintained in manual files at the State level, if at all. It is probably unrealistic to expect manual systems to be able immediately to meet many rapid-access needs of police and prosecutors. On the other hand, queries of the State central repository for most noncriminal justice purposes probably can and should be made prior to dissemination of criminal history record information.

§ 20.21(b). The limitations on dissemination in this subsection are essential to fulfill the mandate of section 524(b) of the Act which requires the Administration to assure that the "privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes." The categories for dissemination established in this section reflect suggestions by hearing witnesses and respondents submitting written commentary.

The regulations distinguish between conviction and nonconviction information insofar as dissemination is concerned. Conviction information is currently made available without limitation in many jurisdictions. Under these regulations, conviction data and pending charges could continue to be disseminated routinely. No statute, ordinance, executive order, or court rule is necessary in order to authorize dissemination of conviction data. However, nothing in the regulations shall be construed to negate a State law limiting such dissemination.

After December 31, 1977, dissemination of nonconviction data would be allowed, if authorized by a statute, ordinance, executive order, or court rule, decision, or order. The December 31, 1977, deadline allows the States time to review and determine the kinds of dissemination for non-criminal justice purposes to be authorized. When a State enacts comprehensive legislation in this area, such legislation will govern dissemination by local jurisdictions within the State. It is possible for a public record law which has been construed by the State to authorize access to the public of all State records, including criminal history record information, to be considered as statutory authority under this subsection. Federal legislation and executive orders can also authorize dissemination and would be relevant authority.

For example, Civil Service suitablity investigations are conducted under Executive Order 10450. This is the authority for most investigations conducted by the Commission. Section 3(a) of 10450 prescribes the minimum scope of investigation and requires a check of FBI fingerprint files and written inquiries to appropriate law enforcement agencies.

§ 20.21(b)(3). This subsection would permit private agencies such as the Vera Institute to receive criminal histories where they perform a necessary administration of justice function such as pretrial release. Private consulting firms which commonly assist criminal justice agencies in information systems development would also be included here.

§ 20.21(b)(4). Under this subsection, any good faith researchers including private individuals would be permitted to use criminal history record information for research purposes. As with the agencies designated in § 20.21(b)(3) researchers would be bound by an agreement with the disseminating criminal justice agency and would, of course, be subject to the sanctions of the Act.

The drafters of the regulations expressly rejected a suggestion which would have limited access for research purposes to certified research organizations. Specifically "certification" criteria would have been extremely difficult to draft and would have inevitably led to unnecessary restrictions on legitimate research.

Section 524(a) of the Act which forms part of the requirements of this section states:

> "Except as provided by Federal law other than this title, no officer or employee of the Federal Government, nor any recipient of assistance under the provisions of this title shall use or reveal any research or statistical information furnished under this title by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained in accordance with this title. Copies of such information shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action suit, or other judicial or administrative proceedings."

LEAA anticipates issuing regulations, pursuant to Section 524(a) as soon as possible.

§ 20.21(c)(2). Presently some employers are circumventing State and local dissemination restrictions by requesting applicants to obtain an official certification of no

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criminal record. An employer's request under the above circumstances gives the applicant the unenviable choice of invasion of his privacy or loss of possible job opportunities. Under this subsection routine certifications of no record would no longer be permitted. In extraordinary circumstances, however, an individual could obtain a court order permitting such a certification.

§ 20.21(c)(3). The language of this subsection leaves to the States the question of who among the agencies and individuals listed in § 20.21(b) shall actually receive criminal records. Under these regulations a State could place a total ban on dissemination if it so wished. The State could, on the other hand, enact laws authorizing any member of the private sector to have access to non-conviction data.

§ 20.21(d). Non-criminal justice agencies will not be able to receive records of juveniles unless the language of a statute or court order, rule, or court decision specifies that juvenile records shall be available for dissemination. Perhaps the most controversial part of this subsection is that it denies access to records of juveniles by Federal agencies conducting background investigations for eligibility to classified information under existing legal authority.

§ 20.21(e) Since it would be too costly to audit each criminal justice agency in most States (Wisconsin, for example, has 1075 criminal justice agencies) random audits of a "representative sample" of agencies are the next best alternative. The term "representative sample" is used to insure that audits do not simply focus on certain types of agencies. Although this subsection requires that there be records kept with the names of all persons or agencies to whom information is disseminated, criminal justice agencies are not required to maintain dissemination logs for "no record" responses.

§ 20.21(f). Requirements are set forth which the States must meet in order to assure that criminal history record information is adequately protected. Automated systems may operate in shared environments and the regulations require certain minimum assurances.

§ 20.21(g)(1). A "challenge" under this section is an oral or written contention by an individual that his record is inaccurate or incomplete; it would require him to give a correct version of his record and explain why he believes his version to be correct. While an individual should have access to his record for review, a copy of the record should ordinarily only be given when it is clearly established that it is necessary for the purpose of challenge.

The drafters of the subsection expressly rejected a suggestion that would have called for a satisfactory verification of identity by fingerprint comparison. It was felt that States ought to be free to determine other means of identity verification.

§ 20.21(g)(5). Not every agency will have done this in the past, but henceforth adequate records including those required under 20.21(e) must be kept so that notification can be made.

§ 20.21(g)(6). This section emphasizes that the right to access and review extends only to criminal history record information and does not include other information such as intelligence or treatment data.

§ 20.22(a). The purpose for the certification requirement is to indicate the extent of compliance with these regulations. The term "maximum extent feasible" acknowledges that there are some areas such as the completeness requirement which create complex legislative and financial problems.

NOTE: In preparing the plans required by these regulations, States should look for guidance to the following documents: National Advisory Commission on Criminal Justice Standards and Goals, Report on the Criminal Justice System; Project SEARCH: Security and Privacy Considerations in Criminal History Information Systems, Technical Reports No. 2 and No. 13; Project SEARCH: A Model State Act for Criminal Offender Record Information, Technical Memorandum No. 3; and Project SEARCH: Model Administrative Regulations for Criminal Offender Record Information, Technical Memorandum No. 4.

Subpart C—§ 20.31. Defines the criminal history record information system operated by the Federal Bureau of Investigation. Each state having a record in the Computerized Criminal History (CCH) file must have a fingerprint card on file in the FBI Identification Division to support the CCH record concerning the individual.

Paragraph (b) is not intended to limit the identification services presently performed by the FBI for Federal, state and local agencies.

§ 20.32. The grandfather clause contained in the third paragraph of this Section is designed, from a practical standpoint, to eliminate the necessity of deleting from the FBI's massive files the non-includable offenses which were stored prior to February, 1973.

In the event a person is charged in court with a serious or significant offense arising out of an arrest involving a non-includable offense, the non-includable offense will appear in the arrest segment of the CCH record.

§ 20.33. Incorporates the provisions of a regulation issued by the FBI on June 26, 1974, limiting dissemination of arrest information not accompanied by disposition information outside the Federal government

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for non-criminal justice purposes. This regulation is cited in 28 CFR 50.12.

§ 20.34. The procedures by which an individual may obtain a copy of his manual identification record are particularized in 28 CFR 16.30-34.

The procedures by which an individual may obtain a copy of his Computerized Criminal History record are as follows:

If an individual has a criminal record supported by fingerprints and that record has been entered in the NCIC CCH File, it is available to that individual for review, upon presentation of appropriate identification, and in accordance with applicable state and Federal administrative and statutory regulations.

Appropriate identification includes being fingerprinted for the purpose of insuring that he is the individual that he purports to be. The record on file will then be verified as his through comparison of fingerprints.

Procedure. 1. All requests for review must be made by the subject of his record through a law enforcement agency which has access to the NCIC CCH File. That agency within statutory or regulatory limits can require additional identification to assist in securing a positive identification.

2. If the cooperating law enforcement agency can make an identification with fingerprints previously taken which are on file locally and if the FBI identification number of the individual's record is available to that agency, it can make an on-line inquiry of NCIC to obtain his record on-line or, if it does not have suitable equipment to obtain an on-line response, obtain the record from Washington, D.C., by mail. The individual will then be afforded the opportunity to see that record.

3. Should the cooperating law enforcement agency not have the individual's fingerprints on file locally, it is necessary for that agency to relate his prints to an existing record by having his identification prints compared with those already on file in the FBI, or, possibly, in the State's central identification agency.

4. The subject of the requested record shall request the appropriate arresting agency, court, or correctional agency to initiate action necessary to correct any stated inaccuracy in his record or provide the information needed to make the record complete.

§ 20.36. This section refers to the requirements for obtaining direct access to the CCH file.

§ 20.37. The 120-day requirement in this section allows 30 days more than the similar provision in Subpart B in order to allow for processing time which may be needed by the states before forwarding the disposition to the FBI.

[Order No. 662-76, 41 FR 34949, Aug. 18, 1976]

PART 21—WITNESS FEES

Sec.
21.1 Employees of the United States serving as witnesses.
21.2 [Reserved]
21.3 Fees and allowances of witnesses in the District of Alaska.
21.4 Use of table of distances.
21.5 Certification of witness attendance.

§ 21.1 Employees of the United States serving as witnesses.

(a) *Applicability.* This section applies to employees of the United States as defined by 5 U.S.C. 2105, except those whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives.

(b) *Entitlement to travel expenses.* (1) An employee is entitled to travel expenses in connection with any judicial or agency proceeding with respect to which he is summoned (and is authorized by his agency to respond to such summons), or is assigned by his agency: (i) To testify or produce official records on behalf of the United States, or (ii) to testify in his official capacity or produce official records on behalf of a party other than the United States.

(2) The term "judicial proceeding" as used in this section means any action, suit, or other judicial proceeding, including any condemnation, preliminary, informational, or other proceeding of a judicial nature. Examples of the latter include hearings and conferences before a committing court, magistrate, or commission, grand jury proceedings, and coroners' inquests. It also includes informational proceedings such as hearings and conferences conducted by a prosecuting attorney for the purpose of determining whether an information or charge should be made in a particular case. The judicial proceeding may be in the District of Columbia, a State, Territory, or possession of the United States including the Commonwealth of Puerto Rico, the Canal Zone, or the Trust Territory of the Pacific Islands.

(3) The term "agency proceeding" means an agency process as defined by

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paragraphs (5), (7), and (9) of 5 U.S.C. 551. The word "summoned" as used in this section means an official request, invitation, or call, evidenced by an official writing of the court, authority, or party responsible for the conduct of the proceeding.

(c) *Allowable travel expenses.* An employee qualifying for payment of travel expenses shall be paid at rates and in amounts allowable for other purposes under the provisions of 5 U.S.C. 5701-5708 and applicable regulations prescribed thereunder by the Administrator of General Services and the employing agency; except, however, to the extent that travel expenses are paid to the employee for his appearance by the court, authority, or party which caused him to be summoned as a witness on behalf of a party other than the United States.

(d) *Payment and reimbursement.* If the employee serves as a witness on behalf of the United States, and the case involves the activity in connection with which he is employed, the travel expenses are paid from the appropriation otherwise available for travel expenses of the employee under proper certification by a certifying official of the agency concerned. If the case does not involve its activity, the employing agency may advance or pay the travel expenses of the employee, and later obtain reimbursement from the agency properly chargeable with the travel expenses by submitting to the latter an appropriate bill together with a copy of the employee's approved travel voucher. If an employee serves as a witness to testify in his official capacity or produce official records on behalf of a party other than the United States, allowable travel expenses hereunder shall be paid by the employing agency from the appropriation otherwise available for travel expenses of the employee under proper certification by a certifying official.

(28 U.S.C. 1821, et seq.)

[Order No. 465-71, 36 FR 15432, Aug. 14, 1971; 36 FR 17506, Sept. 1, 1971, as amended by Order No. 800-78, 43 FR 43297, Sept. 25, 1978]

§ 21.2 [Reserved]

§ 21.3 Fees and allowances of witnesses in the District of Alaska.

The fees and allowances of witnesses in the District of Alaska shall be as follows:

(a) For attendance at the District Court or before any officer pursuant to law, including a commissioner acting in any capacity authorized by law, and for the time necessarily occupied in traveling from their place of residence to the place of trial or hearing and in returning therefrom, witnesses shall be entitled to $24 a day.

(b) In addition to the fee fixed by paragraph (a) of this section, witnesses (other than salaried employees of the Government and detained witnesses) who attend court or attend before a commissioner at points so far removed from their place of residence that they are unable to return thereto each day shall be entitled to a subsistence allowance of $20 a day for each day of such attendance and for each day necessarily occupied in traveling to the place of such attendance and in returning to their place of residence.

(c) Witnesses shall be entitled to travel expenses on the basis of the means of travel actually employed and the distance actually and necessarily traveled, and in accordance with the following:

(1) If the travel is by common carrier, witnesses shall be entitled to the cost of the most economical accommodations available, including jet coach for travel in Alaska and outside Alaska in proceeding to or from Alaska. Receipts or other evidence of actual payment shall be furnished whenever practicable.

(2) If the travel is by privately-owned automobile or other private carrier, witnesses shall be entitled to 15 cents a mile for travel in Alaska; provided that whenever the use of a private airplane, dog-team, or boat is approved by the court, a commissioner, the United States Attorney, or an Assistant United States Attorney, witnesses may be paid the actual rental cost or reasonable estimate of necessary expense.

(3) If the travel is by privately-owned automobile or other private carrier, witnesses shall be entitled to 10 cents a mile for travel outside Alaska in proceeding to or from Alaska: *Provided*, That the total entitlement, including attendance fees and subsistence allowances, shall not exceed that which would have been payable had the most economical accommodations available via common carrier, including jet coach been used.

(4) In addition to the allowances to which they are entitled under paragraphs (b) (1), (2), and (3) of this section, witnesses shall be entitled to incidental travel expenses, such as taxicab fares between the place of lodging and the carrier terminal, and bridge, road, and tunnel tolls, and ferry fares.

(d) Witnesses detained in prison for want of security for their appearance shall not be entitled to attendance fees and subsistence allowances as prescribed in paragraphs (a) and (b) of this section, but shall be entitled to one dollar a day, in addition to the actual subsistence furnished by the Government, while thus detained.

(e) An employee of the United States summoned or assigned to testify or produce official records on behalf of the United States, or to testify in his official capacity or produce official records on behalf of a party other than the United States, in any judicial or agency proceeding in Alaska shall be entitled to expenses as provided by § 21.1.

(f) Payment of witness fees, subsistence allowances, and travel expenses by the United States under this section shall be made upon the basis of a certificate signed by the United States Attorney, an Assistant United States Attorney, the attorney in charge of the case, or a commissioner. With respect to any witness who is allowed subsistence, the certificate shall state that the witness attended court, or attended before a commissioner, as the case may be, at a point so far removed from his place of residence that he was unable to return thereto each day.

(Sec. 30, 31 Stat. 332, sec. 23, 73 Stat. 147; 48 U.S.C. 25, 28 U.S.C. 81A nt.)

[Order No. 214-60, 25 FR 12290, Dec. 1, 1960 as amended by Order No. 408-69, 34 FR 436, Jan. 11, 1969; Order No. 465-71, 36 FR 15433, Aug. 14, 1971]

§ 21.4 Use of table of distances.

Regardless of the mode of travel actually employed, mileage payable to witnesses under section 1821 of Title 28 of the United States Code, as amended by the act of August 1, 1956, 70 Stat. 798, shall be computed on the basis of highway distances as stated in the Rand McNally Standard Highway Mileage Guide or in any other generally accepted highway mileage guide which contains a short-line nationwide table of distances and which is designated by the Assistant Attorney General for Administration for such purpose: *Provided*, That with respect to travel in areas for which no such highway mileage guide exists, mileage payable under the said section 1821 shall be computed on the basis (a) of the mode of travel actually employed, (b) of a usually-traveled route, and (c) of distances as generally accepted in the locality.

(Sec. 1, 62 Stat. 590, as amended, sec. 45, 68 Stat. 1242, as amended; 28 U.S.C. 1823, 1821)

[Order No. 291-62, 27 FR 12619, Dec. 20, 1962; Order No. 327-64, 29 FR 15918, Nov. 28, 1964]

§ 21.5 Certification of witness attendance.

In any case wherein the United States or an officer or agency thereof is a party, the U.S. Marshal for the District shall pay all fees of witnesses on the certificate of the U.S. Attorney, an Assistant U.S. Attorney, or the Department of Justice attorney who actually conducts the case, and in the proceedings before a U.S. Commissioner or Magistrate, on the certificate of such commissioner or magistrate.

(28 U.S.C. 1821, et seq.)

[Order No. 437-70, 35 FR 11391, July 16, 1970]

PART 22—CONFIDENTIALITY OF IDENTIFIABLE RESEARCH AND STATISTICAL INFORMATION

Sec.

22.1 Purpose.
22.2 Definitions.
22.20 Applicability.
22.21 Use of identifiable data.

Sec.
22.22 Revelation of identifiable data.
22.23 Privacy certification.
22.24 Information transfer agreement.
22.25 Final disposition of identifiable materials.
22.26 Requests for transfer of information.
22.27 Notification.
22.28 Use of data identifiable to a private person for judicial, legislative or administrative purposes.
22.29 Sanctions.

AUTHORITY: Secs. 501, 524(a), Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701, et seq.), as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, and Pub. L. 94-503).

SOURCE: 41 FR 54846, Dec. 15, 1976, unless otherwise noted.

NOMENCLATURE CHANGE: 45 FR 62038, Sept. 18, 1980.

§ 22.1 Purpose.

The purpose of these regulations is to:

(a) Protect privacy of individuals by requiring that information identifiable to a private person obtained in a research or statistical program may only be used and/or revealed for the purpose for which obtained;

(b) Insure that copies of such information shall not, without the consent of the person to whom the information pertains, be admitted as evidence or used for any purpose in any judicial or administrative proceedings;

(c) Increase the credibility and reliability of federally-supported research and statistical findings by minimizing subject concern over subsequent uses of identifiable information;

(d) Provide needed guidance to persons engaged in research and statistical activities by clarifying the purposes for which identifiable information may be used or revealed; and

(e) Insure appropriate balance between individual privacy and essential needs of the research community for data to advance the state of knowledge in the area of criminal justice.

§ 22.2 Definitions.

(a) Person—means any individual, partnership, corporation, association, public or private organization or governmental entity, or combination thereof.

(b) Private person—means any person defined in § 22.2(a) other than an agency, or department of Federal, State, or local government, or any component or combination thereof. Included as a private person is an individual acting in his official capacity.

(c) Research or statistical project—means any program, project, or component thereof which is supported in whole or in part with funds appropriated under the Act and whose purpose is to develop, measure, evaluate, or otherwise advance the state of knowledge in a particular area. The term does not include "intelligence" or other information-gathering activities in which information pertaining to specific individuals is obtained for purposes directly related to enforcement of the criminal laws.

(d) Research or statistical information—means any information which is collected during the conduct of a research or statistical project and which is intended to be utilized for research or statistical purposes. The term includes information which is collected directly from the individual or obtained from any agency or individual having possession, knowledge, or control thereof.

(e) Information identifiable to a private person—means information which either—

(1) Is labelled by name or other personal identifiers, or

(2) Can, by virtue of sample size or other factors, be reasonably interpreted as referring to a particular private person.

(f) Recipient of assistance—means any recipient of a grant, contract, interagency agreement, subgrant, or subcontract under the Act and any person, including subcontractors, employed by such recipient in connection with performances of the grant, contract, or interagency agreement.

(g) Officer or employee of the Federal Government—means any person employed as a regular or special employee of the U.S. (including experts, consultants, and advisory board members) as of July 1, 1973, or at any time thereafter.

(h) The act—means the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

(i) Applicant—means any person who applies for a grant, contract, or subgrant to be funded pursuant to the Act.

(j) The Juvenile Justice Act—means the "Juvenile Justice and Delinquency Prevention Act of 1974, as amended."

[41 FR 54846, Dec. 15, 1976, as amended at 43 FR 16974, Apr. 21, 1978]

§ 22.20 Applicability.

(a) These regulations govern use and revelation of research and statistical information obtained, collected, or produced either directly by LEAA, BJS, NIJ, or OJARS or under any interagency agreement, grant, contract, or subgrant awarded under the Crime Control Act and Juvenile Justice Act.

(b) The regulations do not apply to any records from which identifiable research or statistical information was originally obtained; or to any records which are designated under existing statutes as public; or to any information extracted from any records designated as public.

(c) The regulations do not apply to information gained regarding future criminal conduct.

[41 FR 54846, Dec. 15, 1976, as amended at 43 FR 16974, Apr. 21, 1978]

§ 22.21 Use of identifiable data.

Research or statistical information identifiable to a private person may be used only for research or statistical purposes.

§ 22.22 Revelation of identifiable data.

(a) Except as noted in paragraph (b), of this section, research and statistical information relating to a private person may be revealed in identifiable form on a need-to-know basis only to—

(1) Officers, employees, and subcontractors of the recipient of assistance;

(2) Such individuals as needed to implement sections 202(c)(3), 802, and 817(b) of the Act; and sections 223(a)(12)(A), 223(a)(14) and 243 of the Juvenile Justice Act.

(3) Persons or organizations for research or statistical purposes. Information may only be transferred for such purposes upon a clear demonstration that the standards of § 22.26 have been met and that, except where information is transferred under paragraphs (a) (1) and (2) of this section, such transfers shall be conditioned on compliance with a § 22.24 agreement.

(b) Information may be revealed in identifiable form where prior consent is obtained from an individual or where the individual has agreed to participate in a project with knowledge that the findings cannot, by virtue of sample size, or uniqueness of subject, be expected to totally conceal subject identity.

[41 FR 54846, Dec. 15, 1976, as amended at 43 FR 16974, Apr. 21, 1978; 45 FR 62038, Sept. 18, 1980]

§ 22.23 Privacy certification.

(a) Each applicant for LEAA, BJS, NIJ, or OJARS support either directly or under a State plan shall submit a Privacy Certificate as a condition of approval of a grant application or contract proposal which has a research or statistical project component under which information identifiable to a private person will be collected.

(b) The Privacy Certificate shall briefly describe the project and shall contain assurance by the applicant that:

(1) Data identifiable to a private person will not be used or revealed, except as authorized under §§ 22.21, 22.22.

(2) Access to data will be limited to those employees having a need therefore and that such persons shall be advised of and agree in writing to comply with these regulations.

(3) All subcontracts which require access to identifiable data will contain conditions meeting the requirements of § 22.24.

(4) To the extent required by § 22,.27 any private persons from whom identifiable data are collected or obtained, either orally or by means of written questionnaire, shall be advised that the data will only be used or revealed for research or statistical purposes and that compliance with requests for information is not mandatory. Where the notification requirement is to be waived, pursuant to § 22.27(c), a justification must be included in the Privacy Certificate.

(5) Adequate precautions will be taken to insure administrative and physical security of identifiable data.

(6) A log will be maintained indicating that identifiable data have been transmitted to persons other than LEAA, BJS, NIJ, or OJARS or grantee/contractor staff or subcontractors, that such data have been returned, or that alternative arrangements have been agreed upon for future maintenance of such data.

(7) Project plans will be designed to preserve anonymity of private persons to whom information relates, including, where appropriate, name-stripping, coding of data, or other similar procedures.

(8) Project findings and reports prepared for dissemination will not contain information which can reasonably be expected to be identifiable to a private person except as authorized under § 22.22.

(c) The applicant shall attach to the Privacy Certification a description of physical and/or administrative procedures to be followed to insure the security of the data to meet the requirements of § 22.25.

§ 22.24 Information transfer agreement.

Prior to the transfer of any identifiable information to persons other than LEAA, BJS, NIJ, or OJARS or project staff, an agreement shall be entered into which shall provide, as a minimum, that the recipient of data agrees that:

(a) Information identifiable to a private person will be used only for research and statistical purposes.

(b) Information identifiable to a private person will not be revealed to any person for any purpose except where the information has already been included in research findings (and/or data bases) and is revealed on a need-to-know basis for research or statistical purposes, provided that such transfer is approved by the person providing information under the agreement, or authorized under § 22.24(e).

(c) Knowingly and willfully using or disseminating information contrary to the provisions of the agreement shall constitute a violation of these regulations, punishable in accordance with the Act.

(d) Adequate administrative and physical precautions will be taken to assure security of information obtained for such purpose.

(e) Access to information will be limited to those employees or subcontractors having a need therefore in connection with performance of the activity for which obtained, and that such persons shall be advised of, and agree to comply with, these regulations.

(f) Project plans will be designed to preserve anonymity of private persons to whom information relates, including, where appropriate, required name-stripping and/or coding of data or other similar procedures.

(g) Project findings and reports prepared for dissemination will not contain information which can reasonably be expected to be identifiable to a private person.

(h) Information identifiable to a private person (obtained in accordance with this agreement) will, unless otherwise agreed upon, be returned upon completion of the project for which obtained and no copies of that information retained.

§ 22.25 Final disposition of identifiable materials.

Upon completion of a research or statistical project the security of identifiable research or statistical information shall be protected by:

(a) Complete physical destruction of all copies of the materials or the identifiable portion of such materials after a three-year required recipient retention period or as soon as authorized by law, or

(b) Removal of identifiers from data and separate maintenance of a name-code index in a secure location.

The Privacy Certificate shall indicate the procedures to be followed and shall, in the case of paragraph (b) of this section, describe procedures to secure the name index.

§ 22.26 Requests for transfer of information.

(a) Requests for transfer of information identifiable to an individual shall be submitted to the person submitting the Privacy Certificate pursuant to § 22.23.

(b) Except where information is requested by LEAA, BJS, NIJ, or OJARS, the request shall describe the general objectives of the project for which information is requested, and specifically justify the need for such information in identifiable form. The request shall also indicate, and provide justification for the conclusion that conduct of the project will not, either directly or indirectly, cause legal, economic, physical, or social harm to individuals whose identification is revealed in the transfer of information.

(c) Data may not be transferred pursuant to this section where a clear showing of the criteria set forth above is not made by the person requesting the data.

§ 22.27 Notification.

(a) Any person from whom information identifiable to a private person is to be obtained directly, either orally, by questionnaire, or other written documents, shall be advised:

(1) That the information will only be used or revealed for research or statistical purposes; and

(2) That compliance with the request for information is entirely voluntary and may be terminated at any time.

(b) Except as noted in paragraph (c) of this section, where information is to be obtained through observation of individual activity or performance, such individuals shall be advised:

(1) Of the particular types of information to be collected;

(2) That the data will only be utilized or revealed for research or statistical purposes; and

(3) That participation in the project in question is voluntary and may be terminated at any time.

(c) Notification, as described in paragraph (b) of this section, may be eliminated where information is obtained through field observation of individual activity or performance and in the judgment of the researcher such notification is impractical or may seriously impede the progress of the research.

(d) Where findings in a project cannot, by virtue of sample size, or uniqueness of subject, be expected to totally conceal subject identity, an individual shall be so advised.

§ 22.28 Use of data identifiable to a private person for judicial, legislative or administrative purposes.

(a) Research or statistical information identifiable to a private person shall be immune from legal process and shall only be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative or administrative proceeding with the written consent of the individual to whom the data pertains.

(b) Where consent is obtained, such consent shall:

(1) Be obtained at the time that information is sought for use in judicial, legislative or administrative proceedings;

(2) Set out specific purposes in connection with which information will be used;

(3) Limit, where appropriate, the scope of the information subject to such consent.

[41 FR 54846, Dec. 15, 1976, as amended at 45 FR 62038, Sept. 18, 1980]

§ 22.29 Sanctions.

Where LEAA, BJS, NIJ, or OJARS believes that a violation has occurred of section 818(a), these regulations, or any grant or contract conditions entered into thereunder, it may initiate administrative actions leading to termination of a grant or contract, commence appropriate personnel and/or other procedures in cases involving Federal employees, and/or initiate appropriate legal actions leading to imposition of a fine of not to exceed $10,000 against any person responsible for such violations.

[41 FR 54846, Dec. 15, 1976, as amended at 45 FR 62038, Sept. 18, 1980]

PART 23—CRIMINAL INTELLIGENCE SYSTEMS OPERATING POLICIES

Sec.

23.1 Purpose.
23.2 Background.
23.3 Applicability.
23.20 Operating principles.
23.30 Funding guidelines.
23.40 Monitoring and auditing of grants for the funding of intelligence systems.

AUTHORITY: Pursuant to the authority vested in the Office of Justice Assistance, Research, and Statistics by sections 818(c) and 802(a) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et seq.*, as amended by the Omnibus Crime Control Act of 1970, Pub. L. 91-644, 84 Stat., 1880 (Jan. 2, 1971), the Crime Control Act of 1973, Pub. L. 93-83, 87 Stat. 197 (Aug. 6, 1973), the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415, 88 Stat. 1109 (Sept. 7, 1974), the Public Safety Officers' Benefits Act of 1976, Pub. L. 94-430, 90 Stat. 1346 (Sept. 29, 1976), the Crime Control Act of 1976, Pub. L. 94-503, 90 Stat. 2407 (Oct. 15, 1976), the Juvenile Justice Amendments of 1977, Pub. L. 95-155, 91 Stat. 1048 (Oct. 3, 1977), and the Justice System Improvement Act of 1979, Pub. L. 96-157, 93 Stat. 1167.

SOURCE: 45 FR 61613, Sept. 17, 1980, unless otherwise noted.

§ 23.1 Purpose.

The purpose of these regulations is to assure all criminal intelligence systems operating through support under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et seq.*, as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, Pub. L. 94-503, Pub. L. 95-115, and Pub. L. 96-157), are utilized to conformance with the privacy and constitutional rights of individuals.

§ 23.2 Background.

It is recognized that certain criminal activities including but not limited to loan sharking, narcotics, trafficking in stolen property, gambling, extortion, smuggling, bribery, and corruption of public officials often involve some degree of regular coordination and permanent organization involving a large number of participants over a broad geographical area. The exposure of such ongoing networks of criminal activity can be aided by the pooling of information about such activities. However, the collection and exchange of intelligence data necessary to support control of serious criminal activity may represent potential threats to the privacy of individuals to whom such data relates, Policy Guidelines for Federally funded projects are required.

§ 23.3 Applicability.

(a) These standards are applicable to all criminal intelligence systems operating through support under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et seq.*, as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, Pub. L. 94-503, Pub. L. 95-115, and Pub. L. 96-157) or under the State and Local Drug Strike Force Grant Program (Pub. L. 96-68 and Pub. L. 96-132).

(b) As used in these policies, "Intelligence Systems" means the arrangements equipment, facilities, and procedures used for the continuing storage, exchange and analysis of criminal intelligence data, however, the term does not include modus operandi files; "interjurisdictional Intelligence Systems" means those systems for the continuing exchange of criminal intelligence data between local, county, or larger political subdivisions, including the exchange of data between State or local agencies and units of the Federal Government.

§ 23.20 Operating principles.

(a) Criminal intelligence information concerning an individual shall be collected and maintained only if it is reasonably suspected that the individual is involved in criminal activity and that the information is relevant to that criminal activity.

(b) No records shall be maintained or collected about political, religious or social views, association or activities of any individual group, association, corporation, business or partnership unless such information directly relates to an investigation of criminal activities, and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct.

(c) No information which has been obtained in violation of any applicable Federal, State, or local law or ordinance shall be included in any criminal intelligence system.

(d) Intelligence information shall be disseminated only where there is a need to know/right to know the data in the performance of a law enforcement activity.

(e)(1) Except as noted in (e)(2) of this section, intelligence information shall be disseminated only to other law enforcement authorities who shall agree to follow procedures regarding data entry, maintenance, security, and dissemination which are consistent with these standards.

(2) Paragraph (e)(1) of this section shall not limit the dissemination of an assessment of criminal intelligence information to a Government official or to any other individual, when necessary, to avoid imminent danger to life or property.

(f) Agencies maintaining criminal intelligence data shall adopt administrative, technical, and physical safeguards (including audit trails) to insure against unauthorized access and against intentional or unintentional damage. A written record indicating who has been given data, reason for release and date of each dissemination outside the agency is to be kept. Information shall be labeled to indicate levels of sensitivity, levels of confidence, and the identity of control agencies and officials. Each agency must establish written standards for need to know/right to know under subsection (d).

(g) Procedures shall be adopted to assure that all information which is retained has relevancy and importance. Such procedures shall provide for the periodic review of data and the destruction of any information which is misleading, obsolete or otherwise unreliable and shall require that any recipient agencies be advised of such changes. All information retained as a result of this review must reflect the name of the reviewer, date of review and explanation of decision to retain. Any information that has been retained in the system but has not been reviewed for a period of two (2) years must be reviewed and validated before it can be utilized or disseminated.

(h) If automated equipment for use in connection with a criminal intelligence system is to be obtained with funds under the grant, then:

(1) Direct remote terminal access to data shall not be made available to system users; and

(2) No modifications to system design shall be undertaken without prior LEAA approval.

(i) LEAA shall be notified prior to initiation of formal information exchange procedures with any Federal, State, regional, or other information systems not indicated in the grant documents as initially approved at time of award.

(j) Assurances shall be made that there will be no purchase or use in the course of the project of any electronic, mechanical, or other device for surveillance purposes that is in violation of the provisions of Title III of Pub. L. 9-351, as amended, or any applicable state statute related to wiretapping and surveillance.

(k) Assurances shall be made that there shall be no harassment or interference with any lawful political activities as part of the intelligence operation.

(l) Sanctions shall be adopted to control unauthorized access, utilization, or disclosure of information contained in the system.

§ 23.30 Funding guidelines.

(a) LEAA and state criminal justice agencies shall apply the following funding guidelines to all categorical grant applications, and formula grant applications the principal purpose of which is the funding of intelligence systems. Systems shall only be funded where a grantee agrees to adhere to the principles set forth above and the project meets the following criteria:

(1) The proposed collection and exchange of data has been coordinated with and will support ongoing or proposed investigatory or prosecutorial activities relating to specific areas of criminal activity.

(2) The areas of criminal activity in connection with which intelligence data are to be utilized represents a significant and recognized threat to the population and:

(i) Is either undertaken for the purpose of seeking illegal power or profits or poses a threat to the life and property of citizens;

(ii) Involves a significant degree of permanent criminal organization; and

(iii) Is not limited to one jurisdiction.

(3) Control and supervision of information collection and dissemination for the intelligence system will be retained by the head of a government

agency or by an individual with general policy making authority who has been expressly delegated such control and supervision by the head of the agency. This official shall certify in writing that he takes full responsibility and will be accountable for the information maintained by and disseminated from the system and that the operation of the system will be in compliance with the standards set forth in § 23.20.

(4) Where the system is an interjurisdictional system the governmental agency which exercises control and supervision over the operation of the system shall have the head of that agency or an individual with general policymaking authority who has been expressly delegated such control and supervision by the head of the agency: (i) Officially responsible and accountable for actions taken in the name of the joint entity and (ii) certify in writing that he takes full responsibility and will be accountable for insuring that the information transmitted to the interjurisdictional system or to other agencies will be in compliance with the standards set forth in § 23.20. The standards set forth in § 23.20 shall be made part of the By-laws or operating procedures for that system. Each member agency, as a condition of membership, must accept in writing these standards which govern the collection, maintenance and dissemination of information included as part of the interjurisdictional system.

(5) Intelligence data will be collected primarily for State and local law enforcement efforts—exceptions being made only for cases involving joint State-Federal efforts.

§ 23.40 Monitoring and auditing of grants for the funding of intelligence systems.

(a) Grants for the funding of intelligence systems will receive specialized monitoring and audit in accordance with a plan designed to insure compliance with operating principles as set forth in § 23.20. Such plan shall be approved prior to award of funds.

(b) All such grants shall be awarded subject to a Special Condition requiring compliance with standards set forth in § 23.20.

(c) An annual notice will be published by OJARS which will indicate the existence and objective of all systems for the continuing interjurisdictional exchange of intelligence data which are funded under the Act.

PART 24—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN DEPARTMENT OF JUSTICE ADMINISTRATIVE PROCEEDINGS

Subpart A—General Provisions

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AUTHORITY: 5 U.S.C. 504(c)(1).

SOURCE: Order No. 975-82, 47 FR 15776, Apr. 13, 1982, unless otherwise noted.

Subpart A—General provisions

§ 24.101 Purpose of these rules.

These rules are adopted by the Department of Justice pursuant to section 504 of title 5, United States Code, as amended by section 203(a)(1) of the Equal Access to Justice Act, Pub. L. No. 96-481. Under the Act, an eligible party may receive an award for attorney fees and other expenses when it prevails over the Department in an adversary adjudication under 5 U.S.C. 554 before the Department, unless the Department's position as a party to the proceeding was substantially justified or special circumstances make an award unjust. The purpose of these rules is to establish procedures for the submission and consideration of applications for awards against the Department.

§ 24.102 Definitions.

As used in this Part:

(a) "The Act" means section 504 of title 5, United States Code, as amended by section 203(a)(1) of the Equal Access to Justice Act, Pub. L. No. 96-481.

(b) "Adversary adjudication" means an adjudication under 5 U.S.C. 554 in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or reviewing a license.

(c) "Adjudicative officer" means the official, without regard to whether the official is designated as an administrative law judge, a hearing officer or examiner, or otherwise, who presided at the adversary adjudication.

(d) "Department" refers to the relevant departmental component which is conducting the adversary adjudication (e.g., Drug Enforcement Administration or Office of Justice Assistance, Research, and Statistics).

(e) "Proceeding" means an adversary adjudication as defined in § 24.102(b) above.

§ 24.103 Proceedings covered.

(a) These rules apply to adversary adjudications required by statute to be conducted by the Department under 5 U.S.C. 554. Specifically, the proceedings conducted by the Department to which these rules apply are:

(1) Hearings conducted by the Drug Enforcement Administration (DEA) in connection with suspension or revocation of registration of manufacturers, distributors, and dispensers of controlled substances under 21 U.S.C. 824(c) and 21 CFR 1301.51; suspension or revocation of import and export registrations pursuant to 21 U.S.C. 958 and 21 CFR 1311.51;

(2) Hearings conducted by DEA in connection with the scheduling of drugs pursuant to 21 U.S.C. 811(a) and 21 CFR 1308.41;

(3) Handicap discrimination hearings conducted by the Department under 29 U.S.C. 794a(a) and 28 CFR 42.109(d);

(4) Title VI civil rights hearings conducted by the Department under 42 U.S.C. 2000d-1 and 28 CFR 42.109(d);

(5) Grant denial and grant termination hearings conducted by the Office of Justice Assistance, Research, and Statistics (OJARS), the National Institute of Justice (NIJ), the Bureau of Justice Statistics (BJS) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP), or the Law Enforcement Assistance Administration (LEAA) under 42 U.S.C. 3783 and 28 CFR Part 18; and

(6) Civil rights hearings conducted by OJARS under 42 U.S.C. 3789d and 28 CFR 42.214-15.

(b) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 24.104 Applicability to Department of Justice proceedings.

The Act applies to an adversary adjudication pending before the Department at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981 if final Department action has not been taken before that date, and proceedings pending on September 30, 1984.

§ 24.105 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a prevailing party in the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $5 million and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the adversary adjudication was initiated.

§ 24.106 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding unless (1) the position of the Department as a party to the proceeding was substantially justified or (2) special circumstances make the award sought unjust. No presumption arises that the agency's position was not substantially justified simply because the agency did not prevail.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceedings.

§ 24.107 Allowable fees and other expenses.

(a) The following fees and other expenses are allowable under the Act:

(1) Reasonable expenses of expert witnesses;

(2) Reasonable cost of any study, analysis, engineering report, test, or project which the Department finds necessary for the preparation of the party's case;

(3) Reasonable attorney or agent fees;

(b) The amount of fees awarded will be based upon the prevailing market rates for the kind and quality of services furnished, except that

(1) Compensation for an expert witness will not exceed the highest rate paid by the Department for expert witnesses; and

(2) Attorney or agent fees will not be in excess of $75 per hour.

Subpart B—Information Required From Applicants

§ 24.201 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Department in the proceeding that the applicant alleges was not substantially justified.

(b) The application shall include a statement that the applicant's net worth as of the time the proceeding was initiated did not exceed $1 million if the applicant is an individual (other than a sole owner of an unincorporated business seeking an award in that capacity) or $5 million in the case of all other applicants. An applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) and is exempt from taxation under section 501(a) of the Code or, in the case of such an organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under section 501(c)(3) of the Code; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) If the applicant is a partnership, corporation, association, or organization, or a sole owner of an unincorporated business, the application shall state that it did not have more than 500 employees at the time the proceeding was initiated, giving the number of its employees and describing briefly the type and purpose of its organization or business.

(d) The application shall itemize the amount of fees and expenses for which an award is sought.

(e) The application may include any other matters that the applicant believes should be considered in determining whether and in what amount an award should be made.

(f) The application shall be signed by the applicant with respect to the eligibility of the applicant and by the attorney of the applicant with respect to fees and expenses sought. The application shall contain or be accompanied by a written verification under oath or affirmation under penalty of perjury that the information provided in the application and all accompanying material is true and complete to the best of the signer's information and belief.

§ 24.202 Net worth exhibit.

(a) Each applicant except a qualified tax exempt organization or a qualified cooperative must submit with its application a detailed exhibit showing its net worth at the time the proceeding was initiated. If any individual, corporation, or other entity directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or if the applicant directly or indirectly owns or controls a majority of the voting shares of other interest of any corporation or other entity, the exhibit must include a showing of the net worth of all such affiliates or of the applicant including the affiliates. The exhibit may be in any form convenient to the applicant, provided that it makes full disclosure of the applicant's and any affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards of 5 U.S.C. 504(b)(1)(B)(i). The adjudicative officer may require an applicant to file additional information to determine the applicant's eligibility for an award.

(b) The net worth exhibit shall describe any transfers of assets from, or obligations incurred by, the applicant or any affiliate, occurring in the one-year period prior to the date on which the proceeding was initiated, that reduced the net worth of the applicant and its affiliates below the applicable net worth ceiling. If there were no such transactions, the applicant shall so state.

(c) The net worth exhibit shall be included in the public record of the proceeding.

§ 24.203 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, engineering report, test, or project, for which an award is sought.

(b) The documentation shall include an affidavit from any attorney, agent, or expert witness representing or appearing in behalf of the party, stating the actual time expended and the rate at which fees and other expenses were computed and describing the specific services performed.

(1) The affidavit shall state the services performed. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed and paid by the majority of clients during the relevant time periods.

(2) If no hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide information about two attorneys or agents with similar experience, who perform similar work, stating their hourly rate.

(c) The documentation shall also include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided.

(d) The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 24.204 Time for submission of application.

(a) An application must be filed no later than 30 days after final disposition of the proceeding. If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, action on the award of fees shall be stayed pending final disposition of the underlying controversy.

(b) Final disposition means the later of: (1) The date on which the final agency decision is issued, (2) the date on which a petition for rehearing or reconsideration is disposed of, or (3) the date of final resolution of the proceeding, such as settlement or voluntary dismissal, which is not subject to a petition for rehearing or reconsideration.

Subpart C—Procedures for Considering Applications

§ 24.301 Filing and service of documents.

An application for an award and any other pleading or document related to the application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding.

§ 24.302 Answer to application.

(a) Within 30 calendar days after service of the application, Department counsel may file an answer. If Department counsel fails to answer or otherwise fails to contest or settle the application, the adjudicative officer may upon a satisfactory showing of entitlement by the applicant make an award for the applicant's fees and other expenses under 5 U.S.C. 504.

(b) If Department counsel and applicant believe that they can reach a settlement concerning the award, Department counsel may file a statement of intent to negotiate. The filing of such a statement shall extend the time for filing an answer an additional 30 days.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on to support the objection. If the answer is based on any alleged facts not already reflected in the record of the proceeding, Department counsel shall include with the answer either a supporting affidavit or a request for further filings or other action.

§ 24.303 Comments by other parties.

Any party to a proceeding other than the applicant and Department counsel may file comments on an application within 30 calendar days after it is served or on an answer within 15 calendar days after it is served.

§ 24.304 Settlement.

A prevailing party and Department counsel may agree on a proposed settlement of an award before final action on the application, either in connection with a settlement of the underlying proceeding or after the underlying proceeding has been concluded. If the party and Department counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 24.305 Extensions of time.

(a) The adjudicative officer may on motion and for good cause shown grant extensions of time other than for filing an application for fees and expenses after final disposition in the adversary adjudication.

(b) Ordinarily, the determination of an award will be made on the basis of the written record of the underlying proceeding and the filings required or permitted by the foregoing sections of these rules. However, the adjudicative officer may *sua sponte* or on motion of any party to the proceedings require or permit further filings or other action, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further action shall occur only when necessary for full and fair resolution of the issues arising from the application and shall take place as promptly as possible. A motion for further filings or other action shall specifically identify the information sought on the disputed issues and shall explain why the further filings or other action is necessary to resolve the issues.

(c) In the event that an evidentiary hearing is required or permitted by the adjudicative officer, such hearing and any related filings or other action required or permitted shall be conducted pursuant to the procedural rules governing adversary adjudications conducted by the Department component in which the underlying adversary adjudication was conducted.

§ 24.306 Decision on application.

The adjudicative officer shall promptly issue a decision on the application which shall include proposed written findings and conclusions on such of the following as are relevant to the decision:

(a) The applicant's status as a prevailing party;

(b) The applicant's qualification as a "party" under 5 U.S.C. 504(b)(1)(B);

(c) Whether the Department's position as a party to the proceeding was substantially justified;

(d) Whether special circumstances make an award unjust;

(e) Whether the applicant during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy; and

(f) The amounts, if any, awarded for fees and other expenses, with reasons for any difference between the amount requested and the amount awarded.

§ 24.307 Department review.

The decision of the adjudicative officer will be reviewed to the extent permitted by law by the Department in accordance with the Department's procedures for the type of proceeding involved. The Department will issue the final decision on the application.

§ 24.308 Judicial review.

Judicial review of final Department decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 24.309 Payment of award.

An applicant seeking payment of an award shall submit a copy of the final decision granting the award to the Department's Accounting Office for processing. A statement that review of the underlying decision is not being sought in the United States courts, or that the process for seeking review of the award has been completed, must also be included.

PART 25—RECOMMENDATIONS TO THE PRESIDENT ON CIVIL AERONAUTICS BOARD DECISIONS

Sec.
25.1 Purpose.
25.2 Submission of comments.
25.3 Exclusions.
25.4 Public dockets.

AUTHORITY: 28 U.S.C. 509, 510, and 5 U.S.C. 301; Sec. 5 of E.O. 11920, June 10, 1976.

SOURCE: 41 FR 31532, July 29, 1976, unless otherwise noted.

§ 25.1 Purpose.

The purpose of this part is to set forth procedures of the Department of Justice for receiving comments from private parties on possible recommendations by the Department to the President on decisions of the Civil Aeronautics Board submitted for Presidential approval under section 301 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1461), relating to overseas and international air transportation.

§ 25.2 Submission of comments.

(a) It is the policy of the Department that communications described in § 25.1 shall be made in writing whenever possible. All such written communications shall be submitted in duplicate. The officer or employee receiving such a written communication shall immediately send it or a copy of it to the Legal Procedure Unit of the Antitrust Division for docketing in accordance with § 25.4.

(b) Each oral communication described in §25.1 shall be summarized by the person receiving the communication in a memorandum setting forth the date, time, place, participants, matter discussed, length and substance of the conversation. The memorandum shall be forwarded to the Legal Procedure Unit for docketing in accordance with § 25.4.

§ 25.3 Exclusions.

The requirements of this part shall not apply to communications requiring confidential treatment for defense or foreign policy reasons under appropriate legal standards, nor to written communications which are publicly available at the Civil Aeronautics Board.

§ 25.4 Public dockets.

(a) A public docket shall be created in the Legal Procedure Unit, Antitrust Division (Main Justice Building, 10th & Pennsylvania Avenue, N.W., Washington, D.C. 20530), upon receipt by the Unit of a written communication, or memorandum of oral communication, required by this part to be docketed. These public dockets shall be identified by the number and title of the CAB docket dealing with the same proceeding or matter, if such a CAB docket has been established. Until a CAB docket has been established regarding the matter, a description sufficient to permit public identification of the matter shall be used.

(b) All comments submitted and docketed under this part are available for public inspection and copying, and responsive comment, at the address specified in paragraph (a) of this section, between the hours of 9 a.m. and 5:30 p.m. weekdays.

(8 U.S.C. 1103)

[41 FR 31532, July 29, 1976, as amended by Order No. 960-81, 46 FR 52357, Oct. 27, 1981]

PART 30—FINAL REGULATION RELATING TO THE LEAA IMPLEMENTATION OF THE OMB CIRCULAR NO. A-95 REVISED

Subpart A—General Provisions

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30.2 Authority.
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Subpart B—Project Notification Procedures

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30.9 Funding agency responsibilities.
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30.15 Planning and development districts or regions.
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30.20 Memorandum of agreement signatories.
30.21 Applicant for assistance to accomplish areawide planning.
30.22 SPA implementation of memorandum of agreement requirement.
30.23 Inability to effectuate a memorandum of agreement.

Subpart F—Definitions

30.24 Definitions.

AUTHORITY: OMB Circ. No. A-95 Rev.; Sec. 501, Omnibus Crime Control and Safe Streets Act of 1968, as amended 42 U.S.C. 3701, et seq.

SOURCE: 42 FR 5318, Jan. 27, 1977 unless otherwise noted.

Subpart A—General Provisions

§ 30.1 Purpose.

The purpose of this regulation is to implement OMB Circular A-95 Revised (41 FR 2052 (January 13, 1976)) for the cooperation with the Law Enforcement Assistance Administration (LEAA) and State Planning Agencies (SPAs) in the evaluation, review, and coordination of LEAA assisted programs and projects.

§ 30.2 Authority.

This regulation is based upon and incorporates OMB Circular No. A-95 Revised, and is promulgated for the:

(a) Encouragement for the use of a project notification and review system to facilitate coordinated planning on an intergovernmental basis for certain Federal assistance programs in furtherance of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and Title IV of the Intergovernmental Cooperation Act of 1968.

(b) Securing the comments and views of State and local agencies which are authorized to develop and enforce environmental standards on certain Federal or federally assisted projects affecting the environment pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 and regulations of the Council on Environmental Quality.

(c) Furthering the objectives of Title VI of the Civil Rights Act of 1964; section 262(b) of the Juvenile Justice and Delinquency Prevention Act of 1974; and section 518(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3701, et seq.

§ 30.3 Implementation.

Full compliance with OMB Circular No. A-95 Revised is required by all applicants for funds under programs associated with section 205, section 306(a), section 455(a) and section 515(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3701, et seq., and section 222(a) and section 224(a) of the Juvenile Justice Delinquency Prevention Act of 1974, Pub. L. 93-415. This regulation and OMB Circular No. A-95 Revised will have applicability to all programs, projects, and activities (or significant substantive changes thereto) for which LEAA assistance is being sought as outlined below:

(a) Subpart B of this regulation and Part I of OMB Circular No. A-95 Revised cover the following programs:

(1) 16.500 Law Enforcement Assistance—Comprehensive Planning Grants.

(2) 16.501 Law Enforcement Assistance—Discretionary Grants.

(3) 16.502 Law Enforcement Assistance—Improving and Strengthening Law Enforcement and Criminal Justice.

(4) 16.515 Criminal Justice Systems Development.

(5) 16.516 Law Enforcement Assistance—Juvenile Justice and Delinquency Prevention—Formula Allocation to the States.

(6) 16.517 Law Enforcement Assistance—JJDP Special Emphasis Prevention and Treatment.

(b) Part II of OMB Circular No. A-95 Revised does not apply to LEAA assisted programs and projects.

(c) Subpart D of this regulation and Part III of OMB Circular No. A-95 Revised cover the following programs:

(1) 16.502 Law Enforcement Assistance—Improving and Strengthening Law Enforcement and Criminal Justice.

(2) 16.516 Law Enforcement Assistance—Juvenile Justice and Delinquency Prevention—Allocation to the States.

(d) Subpart E of this regulation and Part IV of OMB Circular No. A-95 Revised cover the following programs:

(1) 16.500 Law Enforcement Assistance—Comprehensive Planning Grants.

Subpart B—Project Notification Procedures

§ 30.4 Notification of intent.

(a) Any applicant undertaking to apply to LEAA or an SPA for assistance for a project or program or major substantive modification thereto under an LEAA assisted project or program covered by this Subpart and Part I of OMB Circular No. A-95 Revised is required to notify both the State and areawide planning and development clearinghouses in the jurisdiction in which the project is to be located of the applicant's intent to apply for assistance at such time as the applicant determines to develop an application. The applicant may notify either the State or areawide planning and development clearinghouses where such clearinghouses have agreed on a single entry point into the review system in that State.

(b) In the case of the applications for projects involving land or water use and development or construction in the National Capital (as defined in section 1(b) of the National Capital Planning Act of 1952, as amended) a copy of the notification is to be sent to the National Capital Planning Commission (NCPC) in addition to the State and areawide clearinghouses.

(c) In the case of an application in any State for an activity that is statewide or broader in nature and does not have specific applicability to areawide or local planning and programs, the notification is to be sent only to the State clearinghouse unless otherwise required by the State clearinghouse.

(d) Notifications shall include a summary description of the proposed project. The summary description shall contain the following information:

(1) Identity of the applicant.

(2) The geographical location of the proposed project. A map should be provided, if appropriate.

(3) A brief description of the proposed project by type, purpose, general size or scale, estimated cost, beneficiaries, or other characteristics which will enable the clearinghouses to identify agencies of State or local government having plans, programs, or projects that may be affected by the proposed project.

(4) A statement as to whether the applicant will be required by the funding agency to submit environmental impact information for the proposed project.

(5) The LEAA program title and number under which assistance will be sought as provided in § 30.3.

(6) The estimated date the applicant expects to formally file an application.

(e) Applicants are encouraged to contact the clearinghouse to which the notification will be sent to obtain notification forms and instructions and to submit the notification containing the preliminary information indicated above to the clearinghouse at the earliest possible time to expedite clearinghouse review.

(f) Notifications of all projects affecting a unit of general local government may be requested by the chief executive of such unit to be sent by the areawide clearinghouse to such chief executive or to such central agency as the chief executive may designate for review and reference to appropriate agencies of such unit.

§ 30.5 Application submission.

(a) All applications for assistance under programs covered by this Subpart must be submitted to appropriate clearinghouses for review prior to their submission to the funding agency. However, concurrent submission of an application to the clearinghouses and the funding agency is permissible only if the applicant, clearinghouses, and funding agency agree to concurrent submission.

(b) Where review by clearinghouse has been completed prior to completion of an application, the applicant is not required to submit a completed application to the clearinghouses prior to submission to the funding agency. However, the applicant may be requested by the clearinghouses to supply an information copy of the completed application when the application is submitted to the funding agency.

(c) Applicants will include with the completed application as submitted to the funding agency:

(1) All comments and recommendations made by or through clearinghouses, along with a statement that such comments have been considered prior to submission of the application;

(2) Where no comments have been received from a clearinghouse a statement that the procedures outlined in this section have been followed and that no comments or recommendations have been received; or

(3) Statements from the applicant and clearinghouses agreeing to concurrent review of the application by the clearinghouses and funding agency.

(d) Applications for annual renewal or continuation grants are subject to review upon request of the clearinghouse; and applications not submitted to or acted upon by the funding agency within one year after completion of the clearinghouse review are subject to re-review upon the request of the clearinghouse.

(e) Applications submitted to clearinghouses for review from nongovernmental applicants are not required to include confidential information concerning the financial status or structure or the personnel of the applicant organization, even though the funding agency may require such information to be sent to the funding agency as part of the application.

§ 30.6 Indian tribes

(a) Applications from federally recognized Indian tribes are not subject to the requirements of this Subpart or Part I of OMB Circular No. A-95 Revised. However, Indian tribes may voluntarily comply with this Subpart and are encouraged to do so.

(b) The funding agency shall notify the appropriate State and areawide clearinghouses of any applications submitted by federally recognized Indian tribes upon receipt. SF 424 may be used for such notification.

(c) Where a federally recognized Tribal Government has established a mechanism for coordinating the activities of Tribal departments, divisions, enterprises, and entities, such Tribal Government may require upon obtaining approval from LEAA that applications for assistance under programs covered by this Subpart from such Tribal departments, divisions, enterprises, and entities shall be subject to review by such Tribal coordinating mechanism as though it were a State or areawide clearinghouse. Upon receiving such request for approval, LEAA shall transmit the request to the Office of Management and Budget for comment.

§ 30.7 Clearinghouse review.

(a) Comments and recommendations made by or through clearinghouses with respect to any project are for the purpose of assuring maximum consistency of such projects with State, areawide, and local comprehensive plans.

(b) An applicant may generally expect that State and areawide clearinghouses will complete review of a project notification within 30 days after receipt by the clearinghouses of the notification. However, clearinghouses may request an additional 30 days to review the completed application. Where the applicant has not received a response to the applicant's notification from the clearinghouse within the initial 30-day period, the applicant may consider the clearinghouse to have waived its opportunity to review and comment on the proposed project.

(c) If an applicant submits a completed application to State and areawide clearinghouses during the 30-day notification review period, the applicant may expect that the clearinghouses will complete review within 30 days plus the number of days remaining in the 30 day notification period. If an applicant submits to the clearinghouses a completed application without a project notification, the applicant may expect that the clearinghouses will complete review of the application within 60 days. In all other cases, the applicant may expect that the clearinghouses will complete review of a completed application within 30 days. If clearinghouse review of an application is not completed within these time periods, the applicant may consider that the application has been favorably reviewed and may submit the application to the funding agency for consideration.

§ 30.8 SPA responsibilities.

SPA's shall provide procedures:

(a) For the submission of applications for programs or projects covered by this Subpart to the appropriate clearinghouses.

(b) To insure that all applications contain a State Application Identifier (SAI) number. This is mandatory for use in notifying clearinghouses of action taken on the application.

(c) To insure that all comments have been considered and made a part of the application.

§ 30.9 Funding agency responsibilities.

(a) A funding agency that receives an application that does not carry evidence that appropriate clearinghouses have been given an opportunity to review the application shall return the application to the applicant with instructions to fulfill the requirements of this Subpart. However, if the application is accompanied with statements from the applicant and clearinghouses agreeing to concurrent review by the clearinghouses and the funding agency, the funding agency may, within its discretion, receive the application.

(b) The funding agency must notify appropriate clearinghouses within seven working days of any major action taken on any application that has been reviewed by such clearinghouses. Major actions will include awards, rejections, returns for amendment, deferrals, or withdrawals. The standard multipurpose form, SF 424, as prescribed by Treasury Circular TC 1082 (as revised, October 1975) will be used for this purpose.

(c) Where a clearinghouse has recommended against approval or approval only with specific and major substantive changes and the funding agency approves the application substantially as submitted, the funding agency will provide the clearinghouse with, along with the action notice, an explanation therefor.

(d) Where a clearinghouse has recommended against approval of a project because it conflicts with or duplicates another Federal or federally assisted project, the funding agency will consult with the agency assisting the referenced project prior to acting if it plans to approve the application.

§ 30.10 Requests for exemptions and procedural variations.

(a) LEAA may request an exemption from OMB for certain classes of projects or activities under programs otherwise covered which:

(1) Meet any of the following characteristics: (i) Assistance to organizations and institutions for the provision of education or training not designed to meet the needs of specific individual States or localities.

(ii) Research, not involving capital construction, which is national in scope or is not designed to meet the needs or to address problems of a particular State, area, or locality (except in the case of demonstration or pilot research programs where projects may have an impact on the community or area in which they are being conducted).

(iii) Assistance to education, medical, or similar service institutions or agencies for internal staff development or management improvement purposes.

(iv) Assistance to education institutions or activities that are part of a school's regular academic program and are not related to local programs of health, welfare, employment, or other social services.

(v) Assistance for construction involving only routine maintenance, repair, or minor construction which does not change the use or the scale or intensity of use of the structure or facility.

(vi) Assistance for law enforcement projects involving confidential law enforcement investigative information, techniques, or procedures.

(2) Are of small scale or size or are highly localized as to impact; or

(3) Display other characteristics which might make review impractical.

(b) LEAA may request procedural variations from normal review processes:

(1) On a temporary basis for programs with time constraints brought about because of startup requirements or other unusual circumstances beyond the control of the funding agency.

NOTE: Delay in fund availability is not normally an acceptable reason for a variation. When a delay is anticipated, applicants should be instructed to have their applications reviewed by clearinghouses in readiness for submission when funds become available.

(2) For programs where statutory or related procedural limitations make the normal review processes impracticable.

(c) All requests from LEAA offices or SPA's through LEAA Regional Offices for exemptions or procedural variations should be routed through the Office of Regional Operations, LEAA, Washington, D.C. 20531.

(d) Individual clearinghouses may exempt certain types of projects from review for reasons indicated above or for other reasons appropriate to the State or area.

(e) Applicants should be aware that in various States State law requires review of applications for Federal assistance under various programs not covered by this Subpart. Implementation of such law is enforced through State rules and regulations, and applications are urged to ascertain the existence of such laws and to acquaint themselves with applicable State procedures.

§ 30.11 Joint funding.

Applications for assistance to activities under the Joint Funding Simplification Act (Pub. L. 93-510) or any other joint funding authority, which involves activities funded under one or more of the programs covered under this Subpart, will be subject to the requirements of this Subpart.

Subpart C—Direct Federal Development

§ 30.12 Non-applicability.

Part II of the OMB Circular No. A-95 Revised does not apply to LEAA.

Subpart D—State Plans

§ 30.13 General.

The purpose of this Subpart and Part III of OMB Circular No. A-95 Revised is to provide information about the relationship to State or areawide comprehensive planning of the Annual Comprehensive State Plan.

§ 30.14 Governor's comments.

(a) The Governor, or the agency the Governor has designated to perform reviews under Part III of OMB Circular No. A-95 Revised, must be given an opportunity to comment (up to 45 days) on the relationship of the Annual Comprehensive State Plan to comprehensive and other State plans and programs and to those of affected local or areawide jurisdictions. The Governor is urged to involve areawide clearinghouses in the review of State plans, particularly where such plans have specific applicability to or affect areawide or local plans and programs.

(b) A period of 45 days must be provided the Governor or the designated agency to make such comments. Unless otherwise provided for by the Governor or the designated agency, the 45-day period must be afforded prior to submission of the Annual Comprehensive State Plan to LEAA. Any comments made by the Governor or the designated agency must be submitted with the Annual Comprehensive State Plan.

(c) A "State plan" under this Subpart is defined to include any required supporting planning reports or documentation that indicate the programs, projects, and activities for which Federal funds will be utilized. Such reports or documentation will also be submitted for review at the request of the Governor or the agency he has designated to perform reviews under Part III of OMB Circular No. A-95 Revised.

Subpart E—Coordination of Planning in Multijurisdictional Areas

§ 30.15 Planning and development districts or regions.

The States are encouraged to:

(a) Exercise leadership in delineating and establishing a system of planning and development districts or regions in each State, which can provide a consistent geographic base for the planning and coordination of Federal, State, and local development programs.

(b) Use agencies that have been designated to perform areawide comprehensive planning, planning and development districts or regions established pursuant to paragraph (a) of this section (generally, areawide clearinghouses designated pursuant to Part I of OMB Circular No. A-95 Revised) to carry out or coordinate planning. In the case of interstate metropolitan areas, agencies designated as metropolitan areawide clearinghouses should be utilized to the extent possible to carry out or coordinate LEAA assisted or required areawide planning.

§ 30.16 Governor's review and comment.

Prior to the designation or redesignation (or the approval thereof) of any planning and development district or region under the LEAA programs, the Governor(s) of the State(s) in which the district or region will be located must be allowed a period of 30 days to review the boundaries thereof and comment on its relationship to planning and development districts or regions established by the State. Where the State has established such planning and development districts, the boundaries of areas designated under LEAA programs will conform to them unless there is clear justification for not doing so.

§ 30.17 Consultation in review boundaries.

Where the State has not established planning and development districts or regions which provide a basis for evaluation of the boundaries of the area proposed for designation, major units of general local government and the appropriate Federal Regional Council (FRC) will also be consulted prior to designation of the area to assure consistency with districts established under interlocal agreements and under related Federal programs.

§ 30.18 Justification for variance.

The Office of Management and Budget will be notified through the appropriate FRC by LEAA of any proposed designation and will be informed of such designation when it is made, including such justifications as may be required under § 30.16.

§ 30.19 Common and consistent planning bases and coordination of related activities in multijurisdictional areas.

(a) Each SPA will develop procedures and requirements for applications for multijurisdictional planning and development assistance under appropriate programs to assure the fullest consistency and coordination with planning and development being carried on by the areawide comprehensive planning agency or clearinghouse designated under Part I of the OMB Circular No. A-95 Revised. These procedures shall include provision for submission to the funding agency by any applicant for multijurisdictional planning assistance, if the applicant is other than an areawide comprehensive planning agency, of a memorandum of agreement between the applicant and such areawide comprehensive planning agency covering the means by which their planning activities will be coordinated. The agreement will cover but need not be limited to the following matters:

(1) Identification of relationships between the planning proposed by the applicant and that of the areawide comprehensive planning agency and of similar or related activities that will require coordination;

(2) The organizational and procedural arrangements for coordinating such activities, such as: Overlapping board membership, procedures for joint review of project activities and policies, information exchange, etc.;

(3) Cooperative arrangements for sharing planning resources (funds, personnel, facilities, and services); and

(4) Agreed upon base data, statistics and projections (social, economic, demographic) on the basis of which planning in the area will proceed.

(b) Each SPA must provide to LEAA a description of:

(1) The extent to which law enforcement and criminal justice planning regions are consistent with State established planning and development districts or regions together with reasons for any inconsistency.

(2) Procedural arrangements to assure maximum coordination with related planning under other Federal programs citing existing or planned memoranda of agreement and specific Regional Planning Units and/or State agencies which must execute memoranda of agreement.

§ 30.20 Memorandum of agreement signatories.

The signatories to the memorandum of agreement are:

(a) The areawide comprehensive planning agency (usually the areawide A-95 clearinghouse) and

(b) The applicant for assistance to carry out areawide planning if other than in paragraph (a) of this section. (Not infrequently paragraphs (a) and (b) of this section are the same, in which case no memorandum of agreement is required.)

§ 30.21 Applicant for assistance to accomplish areawide planning.

The applicant referred to in § 30.6(b) will in most cases mean any Regional Planning Units which covers a multijurisdictional area comprising, encompassing or extending into more than one unit of general local government and which does not operate under the auspices of an areawide comprehensive planning agency.

§ 30.22 SPA implementation of memorandum of agreement requirement.

The SPA is required to implement procedures to assure that the memorandum of agreement required is followed.

§ 30.23 Inability to effectuate a memorandum of agreement.

Where an applicant has been unable to effectuate a memorandum of agreement, the applicant will submit a statement indicating the efforts which were made to secure an agreement and the issues that have prevented it. In such case, the SPA in consultation with the FRC, LEAA, and the designated State clearinghouse, will undertake, within a 30-day period after receipt of the application, resolution of the issue before approving the application, if it is otherwise in good order.

Subpart F—Definitions

§ 30.24 Definitions.

(a) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(b) "Unit of general local government" means any city, county, township, town, borough, parish, village or other general purpose political subdivision of a State, an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior, or, for the purpose of assistance eligibility, any agency of the District of Columbia government performing law enforcement functions in and for the District of Columbia.

(c) "Special purpose unit of local government" is any special district, public purpose corporation, or other strictly limited purpose political subdivision of a State.

(d) "LEAA assistance, LEAA financial assistance, LEAA assistance program, or LEAA assisted programs" are programs that provide assistance through LEAA grant or contractual arrangements; these also include technical assistance programs or programs providing assistance in the form of loans. The term does not include any annual payment by the United States to the District of Columbia authorized by Article VI of the District of Columbia Revenue Act of 1947 (D.C. Code sec. 47-2501a and 47-2501b).

(e) "Funding agency" is the Law Enforcement Assistance Administration or, in the case of block or formula grant programs, the State Planning Agency which is responsible for final approval of applications for assistance.

(f) "State planning agency" is the agency created or designated by the chief executive of the State or by State law pursuant to section 203(a)(1) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, et seq., as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, and Pub. L. 94-503).

(g) "Metropolitan area" is a standard metropolitan statistical area as established by the Office of Management and Budget, subject, however, to such modifications and extensions as the Office of Management and Budget may determine to be appropriate for the purpose of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, and the OMB Circular No. A-95 Revised.

(h) "Areawide" means comprising, in metropolitan areas, the whole of contiguous urban and urbanizing areas; and in non-metropolitan areas, contiguous counties or other multijurisdictional areas having common or related social, economic, or physical characteristics indicating a community of developmental interests; or, in either, the area included in a sub-State district designated pursuant to paragraph 1d, Part IV, Attachment A of the OMB Circular No. A-95 Revised.

(i) "Planning and development clearinghouse or clearinghouses" includes:

(1) "State Clearinghouse" which is an agency of the State government designated by the Governor or by State law to carry out the requirements of paragraph 3, Part I, Attachment A of the OMB Circular No. A-95 Revised.

(2) "Areawide clearinghouse" means:

(i) In non-metropolitan areas a comprehensive planning agency designated by the Governor (or Governors in the case of regions extending into more than one State) or by State law to carry out requirements of OMB Circular No. A-95 Revised.

(ii) In metropolitan areas an areawide agency that has been recognized by the Office of Management and Budget as an appropriate agency to perform review functions under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, Title IV of the Intergovernmental Cooperation Act of 1968, and OMB Circular No. A-95 Revised.

(j) "Multijurisdictional area" means any geographical area comprising, encompassing, or extending into more than one unit of general local government.

(k) "Planning and developmental district or region" means a multijurisdictional area that has been formally designated or recognized as an appropriate area for planning under State law or Federal program requirements.

(l) "Direct Federal development" means planning and construction of public works, physical facilities, and installations or land and real property development (including the acquisition, use, and disposal of real property) undertaken by or for the use of the Federal Government or any of its agencies; or the leasing of real property for Federal use where the use or intensity of use of such property will be substantially altered.

(m) "Days" means calendar days.

PART 31—FORMULA GRANTS

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AUTHORITY: Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (42 U.S.C. 5601 et seq.)

SOURCE: 46 FR 63262, Dec. 31, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 31.1 General.

This Part defines eligibility and sets forth requirements for application for and administration of formula grants to State governments authorized by Part B, Subpart I, of the Juvenile Justice and Delinquency Prevention Act.

§ 31.2 Statutory authority.

The statute establishing the Office of Juvenile Justice and Delinquency Prevention and giving authority to make grants for juvenile justice and delinquency prevention improvement programs is the *Juvenile Justice and Delinquency Prevention Act of 1974*, as amended (42 U.S.C. 5601 et seq.).

§ 31.3 Submission date.

Juvenile Justice Plans for Fiscal Year 1982 shall be submitted to the OJJDP within 60 days after States are notified of fiscal year 1982 Formula Grant allocations.

Subpart B—Eligible Applicants

§ 31.100 Eligibility.

All States as defined by Section 103(7) of the JJDP Act.

§ 31.101 Establishment of State Criminal Justice Council.

Each state which chooses to apply for a formula grant shall establish or designate by law a State Criminal Justice Council unless an alternative State agency is designated by the Chief Executive and approved by the OJJDP Administrator pursuant to Section 261(c) of the JJDP Act. States must assure they have available for review a copy of the State law establishing the Council, and a current list of Council membership.

§ 31.102 Membership of Council.

Pursuant to Section 1301(i) of the Justice System Improvement Act (JSIA) of 1979, States participating in the formula grant program of the Juvenile Justice and Delinquency Prevention Act, in addition to statutory membership requirements, must include on the State Criminal Justice Council the chairperson and at least two additional citizen members of that Act. For purposes of this requirement a citizen member is defined as any person who is not a full-time government employee or elected official. Any executive committee of the Council must include the same proportion of juvenile justice advisory group members as are included in the total Council membership.

Subpart C—General Requirements

§ 31.200 General.

This subpart sets forth general requirements applicable to formula grant recipients under the JJDP Act of 1974, as amended. Applicants must assure compliance or submit necessary information on these requirements.

§ 31.201 Audit.

The State must assure that it adheres to the audit requirements enumerated in the "Financial and Administrative Guide for Grants" OJARS Guideline Manual 7100.1B, October 20, 1980. Chapter 8 of the Manual contains a comprehensive statement of audit policies and requirements relative to grantees and subgrantees.

§ 31.202 Civil rights.

(a) To carry out the State's Federal civil rights responsibilities the plan must:

(1) Designate a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements, assurances, and conditions are met and who shall act as liaison in all civil rights matters with OJJDP and the OJARS' Office of Civil Rights Compliance (OCRC).

(2) Contain the Council's Equal Employment Opportunity Program (EEOP), if required to maintain one under 28 CFR 42.301, et seq., where the application is for $500,000 or more.

(b) The application must provide assurance that the State will:

(1) Require that every applicant required to formulate an EEOP in accordance with 28 CFR 42.301 et seq., submit a certification to the State that it has a current EEOP on file, which meets the requirement therein.

(2) Require that every criminal or juvenile justice agency applying for a grant of $500,000 or more submit a copy of its EEOP (if required to maintain one under 28 CFR 42.301, et seq.) to OCRC at the time it submits its application to the State;

(3) Inform the public and subgrantees of affected persons' rights to file a complaint of discrimination with OCRC for investigation;

(4) Cooperate with OCRC during compliance reviews of recipients located within the State; and

(5) Comply, and that its subgrantees and contractors will comply with the requirement that, in the event that a Federal or State court or administration agency makes a finding of discrimination on the basis of race, color, religion, national origin, or sex (after a due process hearing) against a State or a subgrantee or contractor, the affected recipient or contractor will forward a copy of the finding to OCRC.

§ 31.203 Open meetings and public access to records.

The State must assure that it will comply with the requirements of Section 402(c)(2) of the Justice System Improvement Act.

Subpart D—Juvenile Justice Act Requirements

§ 31.300 General.

This subpart set forth specific JJDP Act requirements for application and receipt of formula grants.

§ 31.301 Funding.

(a) *Allocation to States.* Each State receives a base allotment of $225,000 except for the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Mariana Islands where the base amount is $56,250. Funds are allocated among the States on the basis of relative population under 18 years of age.

(b) *Funds for Local Use.* At least two-thirds of the formula grant allocation to the State must be used for programs by local government, or local private agencies unless the State applies for and is granted a waiver by the Office of Juvenile Justice and Delinquency Prevention.

(c) *Match.* Formula grants under the JJDP Act shall be 100% of approved costs, with the exception of planning and administration funds, which require a 100% cash match (dollar for dollar), and construction projects funded under Section 227(a)(2) which require a 50% cash match.

(d) *Funds for Administration.* Not more than 7.5% of the total annual formula grant award may be utilized to develop the annual juvenile justice plan and pay for administrative expenses, including project monitoring evaluation. These funds are to be matched on a dollar for dollar basis. The State shall make available needed funds for planning and administration to units of local government or combinations on an equitable basis. Each annual application must identify uses of such funds.

§ 31.302 Applicant State Agency.

(a) Pursuant to Section 223(a)(2) and Section 261(c) of the JJDP Act, the State assures that a State Criminal Justice Council or other State agency approved under Section 261(c) has been designated as the sole agency for supervising the preparation and administration of the plan and has the authority to implement the plan.

(b) The Chief Executive shall establish a Juvenile Advisory Group pursuant to Section 223(a)(3) of the JJDP Act. The State shall provide a list of all current advisory group members, indicating their respective dates of appointment and how each member meets the membership requirements specified in this Section of the Act.

(c) The State shall assure that it complies with the Advisory Group Financial support requirement of Section 222(d) and the composition and function requirements of Section 223(a)(3) of the JJDP Act.

§ 31.303 Substantive requirements.

(a) *Consultation with and Participation of Units of General Local Government.* The State shall assure that it has complied with Sections 223(a) (4) and (6) of the Act.

(b) *Participation of Private Agencies.* The State shall assure that it has complied with Section 223(a)(9) of the Act.

(c) *Pass-Through Requirement.* The State shall assure that it complies with Section 223(a)(5) of the Act. For purposes of the pass-through requirement, a *local private agency* is defined as a private non-profit agency or organization that provides program services within an identifiable unit or a combination of units of general local government.

(d) *Rights of Privacy of Recipients of Services.* Pursuant to Sections 223(a)(17) and 229 of the JJDP Act, the State shall assure that it has established procedures to meet this requirement.

(e) *Serious Juvenile Offender Emphasis.* Pursuant to Sections 101(a)(8), 223(a)(10) and 224(a)(12) of the JJDP Act, the Office encourages States that have identified serious and violent juvenile offenders as a priority problem, to allocate a minimum of 30% of the formula grant award to programs designed for serious and violent juvenile offenders. Particular attention should be given to the areas of sentencing, providing resources necessary for informed dispositions, and rehabilitation. In accord with Administration policy direction, the Office will attempt to assist States to reach this goal.

(f) *Deinstitutionalization of Status Offenders and Non-Offenders.* Pursuant to Section 223(a)(12)(A) of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable covering the three-year planning cycle, for assuring that the requirements of this section are met. Refer to § 31.303(i)(3) for the rules related to the valid court order exception to this Act requirement.

(2) Describe the barriers the State faces in achieving full compliance with the provisions of this requirement.

(3) For those States that have achieved "substantial compliance" as outlined in Section 223(c) of the Act, indicate the unequivocal commitment to achieving full compliance. Attach documentation.

(4) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with Section 223(a)(12)(A) may, in lieu of addressing paragraphs (f)(1), (2), and (3) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(5) Submit the report required under Section 223(a)(12)(B) of the Act as part of the annual monitoring report required by Section 223(a)(15) of the Act.

(g) *Contact with Incarcerated Adults.* (1) Pursuant to Section 223(a)(13) of the JJDP Act the State shall:

(i) Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. The term *regular contact* is defined as sight and sound contact with incarcerated adults, including inmate trustees. This prohibition seeks as complete a separation as possible and permits no more than haphazard or accidental contact between juveniles and incarcerated adults. In addition, include a timetable for compliance and justify any deviation from a previously approved timetable.

(ii) In those isolated instances where juvenile criminal-type offenders remain confined in adult facilities or facilities in which adults are confined, the State must set forth the procedures for assuring no regular sight and sound contact between such juveniles and adults.

(iii) Describe the barriers which may hinder the separation of alleged or adjudicated criminal-type offenders, status offenders and non-offenders from incarcerated adults in any particular jail, lockup, detention or correctional facility.

(iv) Those States which, based upon the most recently submitted monitoring report, have been found to be in compliance with Section 223(a)(13) may, in lieu of addressing paragraphs (g)(1)(i), (ii), and (iii) of this section, provide an assurance that adequate plans and resources are available to maintain compliance.

(v) Assure that adjudicated offenders are not reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of segregating adults and juveniles in correctional facilities. This does not prohibit or restrict waiver of juveniles to criminal court for prosecution, according to State law. It does, however, preclude a State from administratively transferring a juvenile offender to an adult correctional authority or a transfer within a mixed juvenile and adult facility for placement with adult criminals either before or after a juvenile reaches the statutory age of majority. It also precludes a State from transferring adult offenders to a juvenile correctional authority for placement.

(2) *Implementation.* The requirement of this provision is to be planned and implemented immediately by each state in light of identified constraints on immediate implementation. Immediate compliance is required where no constraints exist. Where constraints exist, the designated date of compliance in the latest approved plan is the compliance deadline. Those states not in compliance must show annual progress toward achieving compliance until compliance is reached.

(h) *Removal of Juveniles from Adult Jails and Lock-ups.* Pursuant to Section 223(a)(14) of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable for assuring that requirements of this section will be met by December 8, 1985. Refer to § 31.303(i)(4) to determine the "exceptional circumstances" which have to exist to permit, in areas characterized by low population density with respect to the detention of juveniles and where no existing acceptable alternative placement is available, the temporary detention of juveniles accused of serious crimes against persons.

(2) Describe the barriers which the State faces in removing all juveniles from adult jails and lock-ups. This requirement excepts only those juveniles formally waived or transferred to criminal court and criminal charges have been filed, or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been involved through the filing of criminal charges.

(3) For those States that have achieved "substantial compliance" with Section 223(a)(14) as specified in Section 223(c) of the Act, indicate the unequivocal commitment to achieving full compliance. Attach documentation.

(4) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with Section 223(a)(14) may, in lieu of addressing paragraphs (b)(1), (2), and (3) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(i) *Monitoring of Jails, Detention Facilities and Correctional Facilities.* (1) Pursuant to Section 223(a)(15) of the JJDP Act, and except as provided by paragraph (i)(7) of this section, the State shall:

(i) Indicate how it will annually identify and survey all secure detention or correctional facilities, jails, lock-ups, and other facilities usable for the detention and confinement of juveniles.

(ii) Provide a plan for an annual on-site inspection of all such facilities identified in paragraph (i)(1)(i) of this section. Such plan shall include a procedure for reporting and investigating compliance complaints in accordance with Section 223(a)(12)(A), (13), and (14).

(iii) Include a description of the barriers which the State faces in developing a monitoring system to establish and report the level of compliance with Sections 223(a)(12), (13), and (14).

(2) For the purpose of monitoring for compliance with Section 223(a)(12)(A) of the Act a secure detention or correctional facility is:

(i) Any secure public or private facility used for the lawful custody of *accused* or adjudicated juvenile offenders or non-offenders; or

(ii) Any secure public or private facility, which is also used for the lawful custody of accused or convicted adult criminal offenders.

(3) *Valid Court Order.* For the purpose of determining whether a valid court order exists and a juvenile has been found to be in violation of that valid order all of the following conditions must be present prior to secure incarceration:

(i) The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile.

(ii) The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures.

(iii) The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile *and to his attorney and/or to his legal guardian* in writing *and* be reflected in the court record and proceedings.

(iv) All judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, only if: (A) There has been a judicial determination, based on a hearing *during the 24-hour grace period*, that there is probable cause to believe the juvenile violated the court order; *and* (B) *the juvenile has a demonstrable recent record of willful failure to appear at family court proceedings or a demonstrable recent record of violent conduct resulting in physical injury to self or others.* In such case the juvenile may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed *72 hours exclusive of nonjudicial days.* A juvenile found in a violation hearing to have violated a court order may be held in a secure detention or correctional facility.

(v) Prior to and during the violation hearing the following full due process rights must be provided:

(A) The right to have the charges against the juvenile in writing served upon him a reasonable time before the hearing;

(B) The right to a hearing before a court;

(C) The right to an explanation of the nature and consequences of the proceedings;

(D) The right to legal counsel, and the right to have such counsel appointed by the court if indigent;

(E) The right to confront witnesses;

(F) The right to present witnesses;

(G) The right to have a transcript or record of the proceedings; and

(H) The right of appeal to an appropriate court.

(vi) In entering any order that directs or authorizes disposition of placement in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine *on the record* that all the elements of a valid court order (paragraphs (i)(3), (i), (ii), (iii) of this section) and the applicable due process rights (paragraph (i)(3), (v) of this section) were afforded the juvenile *and the judge must determine on the record that there is no less restrictive alternative appropriate to the needs of the juvenile and the community.*

(vii) *A non-offender such as a dependent or neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.*

(4) *Removal Exception (Section 223(a)(14)).* The following conditions must be met in order for an accused juvenile criminal-type offender to be temporarily detained (for up to 48 hours) in an adult jail or lock-up:

(i) The geographic area which has jurisdiction over the juvenile has been certified as having a low population density, based upon specific criteria developed by the State and approved by OJJDP. The criteria developed must take into account total county population per square mile. The State must provide rationale for the criteria proposed.

(ii) The juvenile must be accused of a serious crime against persons to include: Criminal homicide, forcible rape, mayhem, kidnapping, aggravated assault, robbery, and extortion accompanied by threats of violence.

(iii) A determination must be made that there is no existing acceptable alternative placement available for the juvenile pursuant to criteria developed by the State and approved by OJJDP.

(iv) The county is not served by a local or regional juvenile detention facility. Generally, this phrase means that there is no public or private juvenile detention facility operated within the county or there is no public or private juvenile facility which is in operation to provide secure detention for accused juvenile offenders from that county.

(5) *Reporting Requirement.* The State shall report annually to the Administrator of OJJDP on the results of monitoring for Sections 223(a)(12), (13), and (14) of the JJDP Act. Three copies of the report shall be submitted to the Administrator of OJJDP no later than December 31 of each year.

(i) To demonstrate the extent of compliance with Section 223(a)(12)(A) of the JJDP Act, the report must at least include the following information for both the baseline and the current reporting periods.

(A) Dates of baseline and current reporting period.

(B) Total number of public and private juvenile detention and correctional facilities AND the number inspected on-site.

(C) Total number of accused status offenders and non-offenders held in any secure detention or correctional facility as defined in § 31.303(i)(2) for longer than 24 hours exclusive of nonjudicial days, excluding those held pursuant to a judicial determination that the juvenile violated a valid court order.

(D) Total number of adjudicated status offenders and non-offenders held in any secure detention or correctional facility as defined in § 31.303(i)(2), excluding those held pursuant to a judicial determination that the juvenile violated a valid court order.

(E) Total number of status offenders held in any secure detention or correctional facilities pursuant to a judicial determination that the juvenile violated a valid court order.

(ii) To demonstrate the extent to which the provisions of Section 223(a)(12)(B) of the JJDP Act are being met, the report must include the total number of accused and adjudicated status offenders and non-offenders placed in facilities that are:

(A) Not near their home community;

(B) Not the least restrictive appropriate alternative; and

(C) Not community-based.

(iii) To demonstrate the progress toward and extent of compliance with Section 223(a)(13) of the JJDP Act, the report must at least include the following information for both the baseline and the current reporting periods.

(A) Designated date for achieving full compliance.

(B) The total number of facilities that can be used for the secure detention and confinement of both juvenile offenders and adult criminal offenders.

(C) The total number of facilities used for the secure detention and confinement of both juvenile offenders and adult criminal offenders during the past 12 months AND the number inspected on-site.

(D) The total number of facilities used for secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide adequate separation.

(E) The total number of juvenile offenders and non-offenders NOT adequately separated in facilities used for the secure detention and confinement of both juveniles and adults.

(iv) To demonstrate the progress toward and extent of compliance with Section 223(a)(14) of the JJDP Act the report must at least include the following information for the baseline and current reporting periods:

(A) Dates of baseline and current reporting period.

(B) Total number of adult jails in the State AND the number inspected on-site.

(C) Total number of adult lock-ups in the State AND the number inspected on-site.

(D) Total number of adult jails holding juveniles during the past twelve months.

(E) Total number of adult lock-ups holding juveniles during the past twelve months.

(F) Total number of adult jails and lock-ups in areas meeting the "removal exceptions" as noted in paragraph (i)(4) of this section, including a list of such counties.

(G) Total number of juvenile-criminal-type offenders held in adult jails in excess of six hours.

(H) Total number of juvenile-criminal-type offenders held in adult lock-ups in excess of six hours.

(I) Total number of accused and adjudicated status offenders and non-offenders held in any adult jail or lock-up as defined in § 31.304.

(J) Total number of juveniles accused of a serious crime against persons held less than 48 hours in adult jails and lock-ups in areas meeting the "removal exception" as noted in paragraph (i)(4) of this section.

(6) *Compliance.* The State must demonstrate the extent to which the requirements of Section 223(a)(12)(A), (13), and (14) of the Act are met. Should the State fail to demonstrate compliance with the requirements of these sections within designated time frames, eligibility for formula grant funding shall terminate. The compliance levels are:

(i) *Substantial compliance* with Section 223(a)(12)(A) requires within three years of initial plan submission achievement of a 75% reduction in the aggregrate number of status offenders and non-offenders held in secure detention or correctional facilities or removal of 100% of such offenders from secure correctional facilities only. In addition, the State must make an unequivocal commitment, through appropriate executive and legislative action, to achieving full compliance within two additional years. *Full compliance* is achieved when a State has removed 100% of such juveniles from secure detention and correctional facilities or can demonstrate full compliance with *de minimis* exceptions pursuant to the policy criteria contained in the FEDERAL REGISTER of January 9, 1981 (46 FR 2566-2569).

(ii) *Compliance* with Section 223(a)(13) has been achieved when a State can demonstrate that:

(A) The last submitted monitoring report, covering a full 12 months of data, demonstrates that no juveniles were incarcerated in circumstances that were in violation of Section 223(a)(13); or

(B)(*1*) State law, regulation, court rule, or other established executive or judicial policy clearly prohibits the incarceration of all juvenile offenders in circumstances that would be in violation of Section 223(a)(13);

(*2*) All instances of noncompliance reported in the last submitted monitoring report were in violation of, or departures from, the State law, rule, or policy referred to in paragraph (i)(6)(ii)(B)(*1*) of this section;

(*3*) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances; and

(*4*) Existing mechanisms for the enforcement of the State law, rule, or policy referred to in paragraph (i)(6)(ii)(B)(*1*) of this section are such that the instances of noncompliance are unlikely to recur in the future.

(iii) *Substantial compliance* with Section 223(a)(14) requires the achievement of a 75% reduction in the number of juveniles held in adult jails and lock-ups by December 8, 1985 and that the State has made an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance within two additional years.

(7) *Monitoring Report Exceptions.* States which have been determined by the OJJDP Administrator to have achieved full compliance with Section 223(a)(12)(A) and compliance with Section 223(a)(13) of the Juvenile Justice Act and which wish to be exempted from the annual monitoring report requirements must submit a written request to the OJJDP Administrator which demonstrates that:

(i) The State provides for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to enable an annual determination of State compliance with Sections 223(a)(12)(A), (13), and (14) of the JJDP Act;

(ii) State legislation has been enacted which conforms to the requirements of Sections 223(a)(12)(A) and (13) of the Juvenile Justice Act; and

(iii) The enforcement of the legislation is statutorily or administratively prescribed, specifically providing that:

(A) Authority for enforcement of the statute is assigned;

(B) Timeframes for monitoring compliance with the statute are specified; and

(C) Adequate sanctions and penalties that will result in enforcement of the statute and procedures for remedying violations are set forth.

(j) *Juvenile Crime Analysis.* Pursuant to Section 223(a)(8)(A) and (B) the State shall conduct an analysis of juvenile crime problems and juvenile justice and delinquency prevention needs.

(1) *Analysis.* The analysis must be provided in the multi-year application. A suggested format for the analysis is provided in the Formula Grant Application Kit.

(2) *Product.* The product of the analysis is a series of brief written problem statements set forth in the application that define and describe the priority problems.

(3) *Programs.* Applications are to include descriptions of programs to be supported with Juvenile Justice Act formula grant funds. A suggested format for these programs is included in the application kit.

(4) *Performance Indicators.* A list of performance indicators must be developed and set forth for each program. These indicators show what data will be collected at the program level to measure whether objectives and performance goals have been achieved and should relate to the measures used in the problem statement and statement of program objectives.

(k) *Concentration of State Effort.* Pursuant to Section 223(a)(8)(C) the State shall assure that it has on file a plan for the concentration of State efforts as they relate to the coordination of all State juvenile delinquency programs with respect to overall policy and development of objectives and priorities for all State juvenile delinquency programs and activities.

(l) *Annual Performance Report.* Pursuant to Section 223(a) and Section 223(a)(21) the State Plan shall provide for submission of an annual performance report. The State shall report on its progress in the implementation of the approved programs, described in the three-year plan. The performance indicators will serve as the objective criteria for a meaningful assessment of progress toward achievement of measurable goals.

(m) *Equitable Distribution of Juvenile Justice Funds and Assistance to Disadvantaged Youth.* The State shall assure that it complies with Sections 223(a)(7) and (16) of the JJDP Act.

(n) *Advanced Techniques.* The State shall assure that it complies with Section 223(a)(10) of the JJDP Act.

(o) *Analytical and Training Capacity.* The State shall assure that it complies with Sections 223(a)(11) and (12) of the JJDP Act.

(p) *Equitable Arrangements for Employees Affected by Assistance Under the Act.* Pursuant to Section 223(a)(18) the State shall assure that fair and equitable arrangements are made to protect the interests of employees affected by assistance under the Act.

(q) *Non-Supplantation.* The State shall assure that it complies with Section 223(a)(20) of the JJDP Act.

(r) *Technical Assistance.* States shall include, within their plan, a description of technical assistance needs. Specific direction regarding the development and inclusion of all Technical Assistance needs and priorities will be provided in the "Application Kit for Formula Grants under the JJDPA."

(s) *Other Terms and Conditions.* Pursuant to Section 223(a)(22) of the JJDP Act, States shall agree to other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of programs assisted under the formula grant.

[46 FR 63262, Dec. 31, 1981, as amended at 47 FR 21230, May 17, 1982]

EFFECTIVE DATE NOTE: Section 31.303(i)(3)(iv)(B), (first clause), was stayed at 47 FR 28546, June 30, 1982 pending additional comments. Unless comments on this clause result in its modification through further notice in the FEDERAL REGISTER by Aug. 16, 1982, the stayed clause published at 47 FR 21230, May 17, 1982, shall become effective Aug. 16, 1982.

§ 31.304 Definitions.

(a) *Private agency.* A private nonprofit agency, organization or institution is:

(1) Any corporation, foundation, trust, association, cooperative, or accredited institution of higher education not under public supervision or control; and

(2) Any other agency, organization or institution which operates primarily for scientific, educational, service, charitable, or similar public purposes, but which is not under public supervision or control, and not part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by IRS to be tax-exempt under the provisions of Section 501(c)(3) of the 1954 Internal Revenue Code.

(b) *Secure.* As used to define a detention or correctional facility this term includes residential facilities which have fixtures designated to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures.

(c) *Facility.* A place, an institution, a building or part thereof, set of buildings or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned and/or operated by public and private agencies.

(d) *Juvenile who is accused of having committed an offense.* A juvenile with respect to whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court.

(e) *Juvenile who has been adjudicated as having committed an offense.* A juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender.

(f) *Juvenile offender.* An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law, i.e., a criminal-type offender or a status offender.

(g) *Criminal-type offender.* A juvenile offender who has been charged with or adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

(h) *Status offender.* A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

(i) *Non-offender.* A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes for reasons other than legally prohibited conduct of the juvenile.

(j) *Lawful custody.* The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law or of a judicial order or decree.

(k) *Other individual accused of having committed a criminal offense.* An individual, adult or juvenile, who has been charged with committing a criminal offense in a court exercising criminal jurisdiction.

(l) *Other individual convicted of a criminal offense.* An individual, adult or juvenile, who has been convicted of a criminal offense in a court exercising criminal jurisdiction.

(m) *Adult jail.* A locked facility, administered by State, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than one year.

(n) *Adult Lockup.* Similar to an adult jail except that an adult lock-up is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

Subpart E—General Conditions and Assurances

§ 31.400 Compliance with statute.

The applicant State must assure and certify that the State and its subgrantees and contractors will comply with applicable provisions of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351, as amended, and with the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415, as amended, and the provisions of the OJARS Financial and Administrative Guide for Grants, M 7100.1B.

§ 31.401 Compliance with other Federal laws, orders, circulars.

The applicant State must further assure and certify that the State and its subgrantees and contractors will adhere to regulations of the Department and other applicable Federal laws, orders and circulars. These general Federal laws and regulations are described in greater detail in the "Fiscal Year 1982 Application Kit for Formula Grants under the JJDP Act."

§ 31.402 Application on file.

Any Federal funds awarded pursuant to an application must be distributed and expended pursuant to and in accordance with the programs contained in the applicant State's current approved application and any advance funds will not be awarded for any program not specifically approved and clearly set forth in the current comprehensive application. Any departures therefrom, other than to the extent permitted by current program and fiscal regulations and guidelines, must be submitted for advance approval by the Administration or of OJJDP.

§ 31.403 Non-discrimination.

The State assures that it will comply, and that subgrantees and contractors will comply, with all applicable Federal nondiscrimination requirements, including:

(a) Section 815(c)(1) of the Justice System Improvement Act of 1979, as made applicable by Section 262(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended;

(b) Title VI of the Civil Rights Act of 1964;

(c) Section 504 of the Rehabilitation Act of 1973, as amended;

(d) Title IX of the Education Amendments of 1972;

(e) The Age Discrimination Act of 1975; and

(f) The Department of Justice Nondiscrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G.

PART 32—PUBLIC SAFETY OFFICERS' DEATH BENEFITS

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APPENDIX TO PART 32

AUTHORITY: Secs. 501 and 704(a) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, et seq., as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, and Pub. L. 94-503).

SOURCE: 42 FR 23255, May 6, 1977, unless otherwise noted.

Subpart A—Introduction

§ 32.1 Purpose.

The purpose of this regulation is to implement the Public Safety Officers' Benefits Act of 1976 which authorizes the Law Enforcement Assistance Administration to pay a benefit of $50,000 to specified survivors of State and local public safety officers found to have died as the direct and proximate result of a personal injury sustained in the line of duty. The Act is Part J of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701. et seq., as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430 and Pub. L. 94-503).

§ 32.2 Definitions.

(a) "The Act" means the Public Safety Officers' Benefits Act of 1976, 42 U.S.C. 3796, et seq., Pub. L. 94-430, 90 Stat. 1346 (September 29, 1976).

(b) "Administration" means the Law Enforcement Assistance Administration.

(c) "Line of duty" means any action which an officer whose primary function is crime control or reduction, enforcement of the criminal law, or suppression of fires is obligated or authorized by rule, regulation, condition of employment or service, or law to perform, including those social, ceremonial, or athletic functions to which he is assigned, or for which he is conpensated, by the public agency he serves. For other officers, "line of duty" means any action the officer is so obligated or authorized to perform in the course of controlling or reducing crime, enforcing the criminal law, or suppressing fires.

(d) "Direct and proximate" or "proximate" means that the antecedent event is a substantial factor in the result.

(e) "Personal injury" means any traumatic injury, as well as diseases which are caused by or result from such an injury, but not occupational diseases.

(f) "Traumatic injury" means a wound or other condition of the body caused by external force, including injuries inflicted by bullets, explosives, sharp instruments, blunt objects or other physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria, but excluding stress and strain.

(g) "Occupational disease" means a disease which routinely constitutes a special hazard in, or is commonly regarded as a concomitant of the officer's occupation.

(h) "Public safety officer" means any person serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or firefighter.

(i) "Law enforcement officer" means any person involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws, including but not limited to police, corrections, probation, parole, and judicial officers, and officials engaged in programs relating to narcotics addiction, such as those responsible for screening arrestees or prisoners for possible diversion into drug treatment programs, who are exposed, on a regular basis, to criminal offenders.

(j) "Firefighter" includes all fire service personnel authorized to engage in the suppression of fires, including any individual serving as an officially-recognized or designated member of a legally-organized volunteer fire department.

(k) "Child" means any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased public safety officer who, at the time of the public safety officer's death, is:

(1) Eighteen years of age or under;

(2) Over eighteen years of age and a student; or

(3) Over eighteen years of age and incapable of self-support because of physical or mental disability.

(l) "Stepchild" means a child of the officer's spouse who was living with, dependent for support on, or otherwise in a parent-child relationship, as set forth in § 32.13(b) of the regulations, with the officer at the time of his death. The relationship of stepchild is not terminated by the divorce, remarriage, or death of the stepchild's natural or adoptive parent.

(m) "Student" means an individual under 23 years of age who has not completed four years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(1) A school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

(2) A school or college or university which has been accredited by a State or by a State recognized or nationally recognized accrediting agency or body;

(3) A school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(4) An additional type of educational or training institution as defined by the Secretary of Labor.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than four months and if he shows to the satisfaction of the Administration that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which, in the judgment of the Administration, he is prevented by factors beyond his control from pursuing his education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period.

(n) "Spouse" means the husband or wife of the deceased officer at the time of the officer's death, and includes a spouse living apart from the officer at the time of the officer's death for any reason.

(o) "Dependent" means a person who was substantially reliant for support upon the income of the deceased public safety officer.

(p) "Intoxication" means a disturbance of mental or physical faculties resulting from the introduction of alcohol, drugs, or other substances into the body.

(q) "Public agency" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States, or any unit of local government, combination of such States, or units, or any department, agency, or instrumentality of any of the foregoing.

(r) "Support" means food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for maintenance of the person supported.

Subpart B—Officers Covered

§ 32.3 Coverage.

In any case in which the Administration determines, pursuant to these regulations, that a public safety officer, as defined in § 32.2(h), has died as the direct and proximate result of a personal injury sustained in the line of duty, the Administration shall pay a benefit of $50,000 in the order specified in § 32.10, subject to the conditions set forth in § 32.6.

§ 32.4 Reasonable doubt of coverage.

The Administration shall resolve any reasonable doubt arising from the circumstances of the officer's death in favor of payment of the death benefit.

§ 32.5 Findings of State and local agencies.

The Administration will give substantial weight to the evidence and findings of fact presented by State and local administrative and investigative agencies. The Administration will request additional assistance or conduct its own investigation when it believes that the existing evidence does not provide the Administration a rational basis for a decision on a material element of eligibility.

§ 32.6 Conditions on payment.

(a) No benefit shall be paid: (1) If the death was caused by:

(i) The intentional misconduct of the public safety officer; or

(ii) The officer's intention to bring about his death;

(2) If voluntary intoxication of the public safety officer was the proximate cause of death; or

(3) To any person whose actions were a substantial contributing factor to the death of the officer.

(b) The Act applies only to deaths occurring from injuries sustained on or after September 29, 1976.

§ 32.7 Intentional misconduct of the officer.

The Administration will consider at least the following factors in determining whether death was caused by the intentional misconduct of the officer:

(a) Whether the conduct was in violation of rules and regulations of the employer, or ordinances and laws; and

(1) Whether the officer knew the conduct was prohibited and understood its import;

(2) Whether there was a reasonable excuse for the violation; or

(3) Whether the rule violated is habitually observed and enforced;

(b) Whether the officer had previously engaged in similar misconduct;

(c) Whether the officer's intentional misconduct was a substantial factor in the officer's death; and

(d) The existence of an intervening force which would have independently caused the officer's death and which would not otherwise prohibit payment of a death benefit pursuant to these regulations.

§ 32.8 Intention to bring about death.

The Administration will consider at least the following factors in determining whether the officer intended to bring about his own death:

(a) Whether the death was caused by insanity, through an uncontrollable impulse or without conscious volition to produce death;

(b) Whether the officer had a prior history of attempted suicide;

(c) Whether the officer's intent to bring about his death was a substantial factor in the officer's death; and

(d) The existence of an intervening force or action which would have independently caused the officer's death and which would not otherwise prohibit payment of a death benefit pursuant to these regulations.

§ 32.9 Voluntary intoxication.

The Administration will consider at least the following factors in determining whether voluntary intoxication was the proximate cause of the officer's death;

(a) The evidence of intoxication at the time the injury from which death resulted was sustained;

(b) Whether, and to what extent, the officer had a prior history of voluntary intoxication while in the line of duty;

(c) Whether and to what degree the officer had previously used the intoxicant in question;

(d) Whether the intoxicant was prescribed medically and was taken within the prescribed dosage;

(e) Whether the voluntary intoxication was a substantial factor in the officer's death; and

(f) The existence of an intervening force or action which would have independently caused the officer's death and which would not otherwise prohibit payment of a death benefit pursuant to these regulations.

Subpart C—Beneficiaries

§ 32.10 Order of priority.

(a) When the Administration has determined that a benefit may be paid according to the provisions of Subpart B and § 32.11 of Subpart C, a benefit of $50,000 shall be paid in the following order of precedence:

(1) If there is no surviving child of the deceased officer, to the spouse of such officer;

(2) If there is no spouse, to the child or children, in equal shares;

(3) If there are both a spouse and one or more children, one-half to the spouse and one-half to the child or children, in equal shares; and

(4) If there is no survivor in the above classes, to the dependent parent or parents, in equal shares.

(b) If no one qualifies as provided in paragraph (a) of this section, no benefit shall be paid.

§ 32.11 Contributing factor to death.

(a) No benefit shall be paid to any person who would otherwise be entitled to a benefit under this part if such person's intentional actions were a substantial contributing factor to the death of the public safety officer.

(b) When a potential beneficiary is denied benefits under subsection (a), the benefits shall be paid to the remaining eligible survivors, if any, of the officer as if the potential beneficiary denied benefits did not survive the officer.

§ 32.12 Determination of relationship of spouse.

(a) Marriage should be established by one (or more) of the following types of evidence in the following order of preference:

(1) Copy of the public record of marriage, certified or attested, or by an abstract of the public record, containing sufficient data to identify the parties, the date and place of the marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record, or a certified copy of the religious record of marriage;

(2) Official report from a public agency as to a marriage which occured while the officer was employed with such agency;

(3) The affidavit of the clergyman or magistrate who officiated;

(4) The original certificate of marriage accompanied by proof of its genuineness and the authority of the person to perform the marriage;

(5) The affidavits or sworn statements of two or more eyewitnesses to the ceremony;

(6) In jurisdictions where "common law" marriages are recognized, the affidavits or certified statements of the spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, the period of cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits or certified statements from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife, and whether they were generally accepted as such in the communities in which they lived; or

(7) Any other evidence which would reasonably support a belief by the Administration that a valid marriage actually existed.

(b) LEAA will not recognize a claimant as a "common law" spouse under § 32.12(a)(6) unless the State of domicile recognizes him or her as the spouse of the officer.

(c) If applicable, certified copies of divorce decrees of previous marriages or death certificates of the former spouses of either party must be submitted.

§ 32.13 Determination of relationship of child.

(a) *In general.* A claimant is the child of a public safety officer if his birth certificate shows the officer as his parent.

(b) *Alternative.* If the birth certificate does not show the public safety officer as the claimant's parent, the sufficiency of the evidence will be determined in accordance with the facts of a particular case. Proof of the relationship may consist of—

(1) An acknowledgement in writing signed by the public safety officer; or

(2) Evidence that the officer has been identified as the child's parent by a judicial decree ordering him to contribute to the child's support or for other purposes; or

(3) Any other evidence which reasonably supports a finding of a parent-child relationship, such as—

(i) A certified copy of the public record of birth or a religious record showing that the officer was the informant and was named as the parent of the child; or

(ii) Affidavits or sworn statements of persons who know that the officer accepted the child as his; or

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with his knowledge the officer was named as the parent of the child.

(c) *Adopted child.* Except as may be provided in paragraph (b) of this section, evidence of relationship must be shown by a certified copy of the decree of adoption and such other evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where the release of such documents or information is prohibited, a revised birth certificate will be sufficient to establish the fact of adoption.

(d) *Stepchild.* The relationship of a stepchild to the deceased officer shall be demonstrated by—

(1) Evidence of birth to the spouse of the officer as required by paragraphs (a) and (b) of this section; or

(2) If adopted by the spouse, evidence of adoption as required by paragraph (c) of this section; or

(3) Other evidence, such as that specified in § 32.13(b), which reasonably supports the existence of a parent-child relationship between the child and the spouse;

(4) Evidence that the stepchild was either—

(i) Living with;

(ii) Dependent for support, as set forth in § 32.15, on; or

(iii) In a parent-child relationship, as set forth in § 32.13(b), with the officer at the time of his death; and

(5) Evidence of the marriage of the officer and the spouse, as required by § 32.12.

§ 32.14 Determination of relationship of parent.

(a) *In general.* A claimant is the parent of a public safety officer if the officer's birth certificate shows the claimant as his parent.

(b) *Alternative.* If the birth certificate does not show the claimant as the officer's parent, proof of the relationship may be shown by—

(1) An acknowledgement in writing signed by the claimant before the officer's death; or

(2) Evidence that the claimant has been identified as the officer's parent by judicial decreee ordering him to contribute to the officer's support or for other purposes; or

(3) Any other evidence which reasonably supports a finding of a parent-child relationship, such as:

(i) A certified copy of the public record of birth or a religious record showing that the claimant was the informant and was named as the parent of the officer; or

(ii) Affidavits or sworn statements of persons who know the claimant had accepted the officer as his child; or

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with his knowledge the claimant had been named as the parent of the child.

(c) *Adoptive Parent.* Except as provided in paragraph (b) of this section, evidence of relationship must be shown by a certified copy of the decree of adoption and such other evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where release of such documents or information is prohibited, a revised birth certificate showing the claimant as the officer's parent will suffice.

(d) *Step-parent.* The relationship of a step-parent to the deceased officer shall be demonstrated by—

(1) (i) Evidence of the officer's birth to the spouse of the step-parent as required by § 32.13 (a) and (b); or

(ii) If adopted by the spouse of the step-parent, proof of adoption as required by § 32.13(c); or

(iii) Other evidence, such as that specified in paragraph (b) of this section, which reasonably supports a parent-child relationship between the spouse and the officer; and

(2) Evidence of the marriage of the spouse and the step-parent, as required by § 32.12.

§ 32.15 Determination of dependency.

(a) To be eligible for a death benefit under the Act, a parent or a stepchild not living with the deceased officer at the time of the officer's death shall demonstrate that he or she was substantially reliant for support upon the income of the officer.

(b) The claimant parent or stepchild shall demonstrate that he or she was dependent upon the decedent at either the time of the officer's death or of the personal injury that was a substantial factor in the officer's death.

(c) The claimant parent or stepchild shall demonstrate dependency by submitting a signed statement of dependency a signed statement of dependency within a year of the officer's death. This statement shall include the following information—

(1) A list of all sources of income or support for the twelve months preceding the officer's injury or death;

(2) The amount of income or value of support derived from each source listed; and

(3) The nature of support provided by each source.

(d) Generally, the Administration will consider a parent or stepchild "dependent" if he or she was reliant on the income of the deceased officer for over one-third of his or her support.

Subpart D—Interim and Reduced Payments

§ 32.16 Interim payment in general.

Whenever the Administration determines, upon a showing of need and prior to taking final action, that a death of a public safety officer is one with respect to which a benefit will probably be paid, the Administration may make an interim benefit payment not exceeding $3,000, to a person entitled to receive a benefit under Subpart C of this part.

§ 32.17 Repayment and waiver of repayment.

Where there is no final benefit paid, the recipient of any interim benefit paid under § 32.16 shall be liable for repayment of such amount. The Administration may waive all or part of such repayment and shall consider for this purpose the hardship which would result from repayment.

§ 32.18 Reduction of payment.

(a) The Benefit payable under this part shall be in addition to any other benefits that may be due from any other source, but shall be reduced by—

(1) Payments authorized by section 8191 of Title 5, United States Code, providing compensation for law enforcement officers not employed by the United States killed in connection with the commission of a crime against the United States;

(2) Payments authorized by Section 12(k) of the Act of September 1, 1916, as amended (§ 4-531(1) of the District of Columbia Code); and

(3) The amount of the interim benefit payment made to the claimant pursuant to § 32.16.

(b) No benefit paid under this part shall be subject to execution or attachment.

Subpart E—Filing and Processing of Claims

§ 32.19 Persons executing claims.

(a) The Administration shall determine who is the proper party to execute a claim in accordance with the following rules—

(1) The claim shall be executed by the claimant or his legally designated representative if the claimant is mentally competent and physically able to execute the claim.

(2) If the claimant is mentally incompetent or physically unable to execute the claim; and

(i) Has a legally appointed guardian, committee, or other representative, the claim may be executed by such guardian, committee, or other representative, or

(ii) Is in the care of an institution, the claim may be executed by the manager or principal officer of such institution.

(3) For good cause shown, such as the age or prolonged absence of the claimant, the Administration may accept a claim executed by a person other than one described in paragraphs (a)(1) and (a)(2) of this section.

(b) Where the claim is excecuted by a person other than the claimant, such person shall, at the time of filing the claim or within a reasonable time thereafter, file evidence of his authority to execute the claim on behalf of such claimant in accordance with the following rules—

(1) If the person executing the claim is the legally-appointed guardian, committee, or other legally-designated representative of such claimant, the evidence shall be a certificate executed by the proper official of the court of appointment.

(2) If the person executing the claim is not such such a legally-designated representative, the evidence shall be a statement describing his relationship to the claimant or the extent to which he has the care of such claimant or his position as an officer of the institution of which the claimant is an inmate or patient. The Administration may, at any time, require additional evidence to establish the authority of any such person to file or withdraw a claim.

§ 32.20 Claims.

(a) Claimants are encouraged to submit their claims on LEAA Form 3650/1, which can be obtained from: Public Safety Officers' Benefits Program, Law Enforcement Assistance

Administration, Washington, D.C. 20531.

(b) Where an individual files Form 3650/1 or other written statement with the Administration which indicates an intention to claim benefits, the filing of such written statement shall be considered to be the filing of a claim for benefits.

(c) A claim by or on behalf of a survivor of a public safety officer shall be filed within one year after the date of death unless the time for filing is extended by the Administrator for good cause shown.

(d) Except as otherwise provided in this part, the withdrawal of a claim, the cancellation of a request for such withdrawal, or any notice provided for pursuant to the regulations in this part, shall be in writing and shall be signed by the claimant or the person legally designated to execute a claim under § 32.19.

§ 32.21 Evidence.

(a) A claimant for any benefit or fee under the Act and the regulations shall submit such evidence of eligibility or other material facts as is specified by these regulations. The Administration may at any time require additional evidence to be submitted with regard to entitlement, the right to receive payment, the amount to be paid, or any other material issue.

(b) Whenever a claimant for any benefit or fee under the Act and the Regulations has submitted no evidence or insufficient evidence of any material issue or fact, the Administration shall inform the claimant what evidence is necessary for a determination as to such issue or fact and shall request him to submit such evidence within a reasonable specified time. The claimant's failure to submit evidence on a material issue or fact, as requested by the Administration, shall be a basis for determining that the claimant fails to satisfy the conditions required to award a benefit or fee or any part thereof.

(c) In cases where a copy of a record, document, or other evidence, or an excerpt of information therefrom, is acceptable as evidence in lieu of the original, such copy or excerpt shall, except as may otherwise clearly be indicated thereon, be certified as a true and exact copy or excerpt by the official custodian of such record, or other public official authorized to certify the copy.

§ 32.22 Representation.

(a) A claimant may be represented in any proceeding before the Administration by an attorney or other person authorized to act on behalf of the claimant pursuant to § 32.19.

(b) No contract for a stipulated fee or for a fee on a contingent basis will be recognized. Any agreement between a representative and a claimant in violation of this subsection is void.

(c) Any individual who desires to charge or receive a fee for services rendered for an individual in any application or proceeding before the Administration must file a written petition therefore in accordance with paragraph (e) of this section. The amount of the fee he may charge or receive, if any, shall be determined by the Administration on the basis of the factors described in paragraphs (e) and (g) of this section.

(d) Written notice of a fee determination made under this section shall be mailed to the representative and the claimant at their last known addresses. Such notice shall inform the parties of the amount of the fee authorized, the basis of the determination, and the fact that the Administration assumes no responsibility for payment.

(e) To obtain approval of a fee for services performed before the Administration, a representative, upon completion of the proceedings in which he rendered services, must file with the Administration a written petition containing the following information—

(1) The dates his services began and ended;

(2) An itemization of services rendered with the amount of time spent in hours, or parts thereof;

(3) The amount of the fee he desires to charge for services performed;

(4) The amount of fee requested or charged for services rendered on behalf of the claimant in connection with other claims or causes of action

arising from the officer's death before any State or Federal court or agency;

(5) The amount and itemization of expenses incurred for which reimbursement has been made or is expected;

(6) The special qualifications which enabled him to render valuable services to the claimant (this requirement does not apply where the representative is an attorney); and

(7) A statement showing that a copy of the petition was sent to the claimant and that the claimant was advised of his opportunity to submit his comments on the petition to LEAA within 20 days.

(f) No fee determination will be made by the Administration until 20 days after the date the petition was sent to the claimant. The Administration encourages the claimant to submit comments on the petition to the Administration during the 20-day period.

(g) In evaluating a request for approval of a fee, the purpose of the public safety officers' benefits program—to provide a measure of economic security for the beneficiaries thereof—will be considered, together with the following factors—

(1) The services performed (including type of service);

(2) The complexity of the case;

(3) The level of skill and competence required in rendition of the services;

(4) The amount of time spent on the case;

(5) The results achieved;

(6) The level of administrative review to which the claim was carried within the Administration and the level of such review at which the representative entered the proceedings;

(7) The amount of the fee requested for services rendered, excluding the amount of any expenses incurred, but including any amount previously authorized or requested;

(8) The customary fee for this kind of service; and

(9) Other awards in similar cases.

(h) In determining the fee, the Administration shall consider and add thereto the amount of reasonable and unreimbursed expenses incurred in establishing the claimant's case. No amount of reimbursement shall be permitted for expenses incurred in obtaining medical or documentary evidence in support of the claim which has previously been obtained by the Administration, and no reimbursement shall be allowed for expenses incurred by him in establishing or pursuing his application for approval of his fee.

Subpart F—Determination, Hearing, and Review

§ 32.23 Finding of eligibility or ineligibility.

Upon making a finding of eligibility, the Administration shall notify each claimant of its disposition of his or her claim. In those cases where the Administration has found the claimant to be ineligible for a death benefit, the Administration shall specify the reasons for the finding. The finding shall set forth the findings of fact, and conclusions of law supporting the decision. A copy of the decision, together with information as to the right to a hearing and review shall be mailed to the claimant at his or her last known address.

§ 32.24 Request for a hearing.

(a) A claimant may, within thirty (30) days after notification of ineligibility by the Administration, request the Administration to reconsider its finding of ineligibility. The Administration shall provide the claimant the opportunity for an oral hearing which shall be held within sixty (60) days after the request for reconsideration. The claimant may waive the oral hearing, and present written evidence to the Administration within sixty (60) days after the request. The request for hearing shall be made to the Director, Public Safety Officers' Benefits Program, Law Enforcement Assistance Administration, Washington, D.C. 20531.

(b) If requested, the oral hearing shall be conducted before a hearing officer authorized by the Administration to conduct the hearing, in any location agreeable to the claimant and the hearing officer.

(c) In conducting the hearing, the hearing officer shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by Chapter 5 of the Administrative Procedures Act, but must conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose the hearing officer shall receive such relevant evidence as may be introduced by the claimant and shall, in addition, receive such other evidence as the hearing officer may determine to be necessary or useul in evaluating the claim. Evidence may be presented orally or in the form of written statements and exhibits. The hearing shall be recorded, and the original of the complete transcript shall be made a part of the claims record.

(d) Pursuant to 42 U.S.C. 3787, the hearing officer may, whenever necessary:

(1) Issue subpoenas;

(2) Administer oaths;

(3) Examine witnesses; and

(4) Receive evidence at any place in the United States.

(e) If the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, he may adjourn the hearing and, at any time prior to mailing the decision, reopen the hearing for the receipt of such evidence.

(f) A claimant may withdraw his or her request for a hearing at any time prior to the mailing of the decision by written notice to the hearing officer so stating, or by orally so stating at the hearing. A claimant shall be deemed to have abandoned his or her request for a hearing if he or she fails to appear at the time and place set for the hearing, and does not, within 10 days after the time set for the hearing, show good cause for such failure to appear.

(g) The hearing officer shall, within thirty (30) days after receipt of the last piece of evidence relevant to the proceeding, make a determination of eligibility. The determination shall set forth the findings of fact and conclusions of law supporting the determination. The hearing officer's determination shall be the final agency decision, except when it is reviewed by the Administrator under paragraph (h) or (i).

(h) The Administrator may, on his own motion, review a determination made by a hearing officer. If he decides to review the determination, he shall:

(1) Inform the claimant of the hearing officer's determination and his decision to review that determination; and

(2) Give the claimant 30 days to comment on the record and offer new evidence or argument on the issues in controversy.

The Administrator, in accordance with the facts found on review, may affirm or reverse the hearing officer's determination. The Administrator's determination shall set forth the findings of fact and conclusions of law supporting the determination. The Administrator's determination shall be the final agency decision.

(i) A claimant determined ineligible by a hearing officer under paragraph (g) may, within thirty (30) days after notification of the hearing officer's determination:

(1) Request the Administrator to review the record and the hearing officer's determination; and

(2) Comment on the record, and offer new evidence or argument on the issues in controversy.

The Administrator shall make the final agency determination of eligibility within thirty (30) days after expiration of the comment period. The notice of final determination shall set forth the findings of fact and conclusions of law supporting the determination. The Administrator's determination shall be the final agency decision.

(j) No payment of any portion of a death benefit, except interim benefits payable under § 32.16, shall be made until all hearings and reviews which may affect that payment have been completed.

[45 FR 16180, Mar. 13, 1980]

APPENDIX TO PART 32—PSOB HEARING AND APPEAL PROCEDURES

1. *Notification to Claimant of Denial.* These appeal procedures apply to a claim-

ant's[1] request for reconsideration of a denial made by the Public Safety Officers' Benefits (PSOB) Office. The denial letter will advise the claimant of the findings of fact and conclusions of law supporting the PSOB Office's determination, and of the appeal procedures available under § 32.24 of the PSOB regulations. A copy of every document in the case file that (1) contributed to the determination; and (2) was not provided by the claimant shall also be attached to the denial letter, except where disclosure of the material would result in a clearly unwarranted invasion of a third party's privacy. The attached material might typically include medical opinions offered by the Armed Forces Institute of Pathology, legal memoranda from the Office of General Counsel of the Office of Justice Assistance, Research, and Statistics (OJARS), or memoranda to the file prepared by PSOB staff. A copy of the PSOB regulations shall also be enclosed.

2. *Receipt of Appeal.* A. When an appeal has been received, PSOB will assign the case, and transmit the complete case file to a hearing officer. Assignments will be made in turn, from a standing roster, except in those cases where a case is particularly suitable to a specific hearing officer's experience.

B. PSOB will inform the claimant of the name of the hearing officer, request submission of all evidence to the hearing officer, and send a copy of this appeals procedure. If an oral hearing is requested, PSOB will be responsible for scheduling the hearing and making the required travel arrangements.

C. PSOB will be responsible for providing all administrative support to the hearing officer. An attorney from the Office of General Counsel who has not participated in the consideration of the claim will provide legal advice to the hearing officer. The hearing officer is encouraged to solicit the advice of the assigned OGC attorney on all questions of law.

D. Prior to the hearing, the hearing officer shall request the claimant to provide a list of expected witnesses, and a brief summary of their anticipated testimony.

3. *Designation of Hearing Officers.* A. In LEAA Instruction I 1310.57A (December 26, 1979) the Administrator designated a roster of hearing officers to hear PSOB appeals.

B. The hearing officers are specifically delegated the Administrator's authority under 42 U.S.C. 3787 to:

(1) Issue subpoenas;

(2) Administer oaths;

(3) Examine witnesses; and

(4) Receive evidence at any place in the United States the officer may designate.

4. *Conduct of the Oral Hearing.* A. If requested, an oral hearing shall be conducted before the hearing officer in any location agreeable to the officer and the claimant.

B. The hearing officer shall call the hearing to order and advise the claimant of (1) the findings of fact and conclusions of law supporting the initial determination; (2) the nature of the hearing officer's authority; and (3) the manner in which the hearing will be conducted and a determination reached.

C. In conducting the hearing, the hearing officer shall not be bound by common law or statutory rules of evidence, by technical or formal rules or procedures, or by Chapter 5 of the Administrative Procedure Act, but must conduct the hearing in such a manner as to best ascertain the rights of the claimant.

D. The hearing officer shall receive such relevant evidence as may be introduced by the claimant and shall, in addition, receive such other evidence as the hearing officer may determine to be necessary or useful in evaluating the claim.

E. Evidence may be presented orally or in the form of written statements and exhibits. All witnesses shall be sworn by oath or affirmation.

F. If the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing may be adjourned and, at any time prior to the mailing of notice of the decision, reopened for the receipt of such evidence. The officer should, in any event, seek to conclude the hearing within 30 days from the first day of the hearing.

G. All hearings shall be attended by the claimant and his or her representative, and such other persons as the hearing officer deems necessary and proper. The wishes of the claimant should always be solicited before any other persons are admitted to the hearing.

H. The hearing shall be recorded, and the original of the complete transcript shall be made a part of the claims record.

I. The hearing will be deemed closed on the day the hearing officer receives the last piece of evidence relevant to the proceeding.

J. If the claimant waives the oral hearing, the hearing officer shall receive all relevant written evidence the claimant wishes to submit. The hearing officer may ask the claimant to clarify, or explain the evidence submitted, when appropriate. The hearing officer should seek to close the record no later than 60 days after the claimant's request for reconsideration.

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[1] As used in this procedure, the word "claimant" means a claimant for benefits or, where appropriate, the claimant's designated representative.

5. *Determination.* A. A copy of the transcript shall be provided to the claimant, to PSOB, and OGC after the conclusion of the hearing.

B. The hearing officer shall make his, or her, determination no later than the 30th day after the last piece of evidence has been received. Copies of the determination shall be made available to PSOB and OGC for their review.

C. If either PSOB or OGC disagrees with the hearing officer's final determination, that office may request the Administrator to review the record. If the Administrator agrees to review the record, he will send the hearing officer's determination, all comments received from PSOB, OGC, or other sources (except where disclosure of the material would result in an unwarranted invasion of privacy), and notice of his intent to review the record, to the claimant. He will also advise the claimant of his or her opportunity to offer comments, new evidence, and argument to the Administrator within 30 days after the receipt of notification. The Administrator shall seek to advise all parties of the final agency decision within 30 days after the expiration of the comment period.

D. If PSOB and OGC agree with the hearing officer's determination, or the Administrator declines to review the record, the hearing officer's determination will be the final agency decision, and will be sent to the claimant by PSOB immediately.

E. If the hearing officer's determination is a denial, all material that (1) contributed to the determination and (2) was not provided by the claimant shall be attached to the denial letter, except where disclosure of the material would result in a clearly unwarranted invasion of a third party's privacy. The claimant will be given an opportunity to request the Administrator to review the record and the hearing officer's decision, and to offer comments, new evidence, or argument to the Administrator within 30 days. The Administrator shall advise all parties of the final agency decision within 30 days after the expiration of the comment period.

F. PSOB will provide administrative support to the hearing officer and the Administrator throughout the appeal process.

[45 FR 16181, Mar. 13, 1980]

PART 40—STANDARDS FOR INMATE GRIEVANCE PROCEDURES

Subpart A—Minimum Standards for Inmate Grievance Procedures

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40.1 Definitions.
40.2 Adoption of procedures.
40.3 Communication of procedures.
40.4 Accessibility.
40.5 Applicability.
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40.7 Operation and decision.
40.8 Emergency procedure.
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Subpart B—Procedures for Obtaining Certification of a Grievance Procedure

40.11 Submissions by applicant.
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40.17 Reapplication after denial of certification.
40.18 Suspension of certification.
40.19 Withdrawal of certification.
40.20 Contemplated change in certified procedure.
40.21 Notification of court.
40.22 Significance of certification.

AUTHORITY: Pub. L. 96-247, 94 Stat. 349 (42 U.S.C. 1997).

SOURCE: Order No. 957-81, 46 FR 48186, Oct. 1, 1981, unless otherwise noted.

Subpart A—Minimum Standards for Inmate Grievance Procedures

§ 40.1 Definitions.

For the purposes of this part—

(a) "Act" means the Civil Rights of Institutionalized Persons Act, Pub. L. 96-247, 94 Stat. 349 (42 U.S.C. 1997).

(b) "Applicant" means a state or political subdivision of a state that submits to the Attorney General a request for certification of a grievance procedure.

(c) "Attorney General" means the Attorney General of the United States or the Attorney General's designees.

(d) "Grievance" means a written complaint by an inmate on the inmate's own behalf regarding a policy applicable within an institution, a condition in an institution, an action involving an inmate of an institution, or an incident occurring within an institution. The term "grievance" does not include a complaint relating to a parole decision.

(e) "Inmate" means an individual confined in an institution for adults, who has been convicted of a crime.

(f) "Institution" means a jail, prison, or other correctional facility, or pretrial detention facility that houses adult inmates and is owned, operated, or managed by or provides services on behalf of a State or political subdivision of a State.

(g) "State" means a State of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

(h) "Substantial compliance" means that there is no omission of any essential part from compliance, that any omission consists only of an unimportant defect or omission, and that there has been a firm effort to comply fully with the standards.

§ 40.2 Adoption of procedures.

Each applicant seeking certification of its grievance procedure for purposes of the Act shall adopt a written grievance procedure. Inmates and employees shall be afforded an advisory role in the formulation and implementation of a grievance procedure adopted after the effective date of these regulations, and shall be afforded an advisory role in reviewing the compliance with the standards set forth herein of a grievance procedure adopted prior to the effective date of these regulations.

§ 40.3 Communication of procedures.

The written grievance procedure shall be readily available to all employees and inmates of the institution. Additionally, each inmate and employee shall, upon arrival at the institution, receive written notification and an oral explanation of the procedure, including the opportunity to have questions regarding the procedure answered orally. The written procedure shall be available in any language spoken by a significant portion of the institution's population, and appropriate provisions shall be made for those not speaking those languages, as well as for the impaired and the handicapped.

§ 40.4 Accessibility.

Each inmate shall be entitled to invoke the grievance procedure regardless of any disciplinary, classification, or other administrative or legislative decision to which the inmate may be subject. The institution shall ensure that the procedure is accessible to impaired and handicapped inmates.

§ 40.5 Applicability.

The grievance procedure shall be applicable to a broad range of complaints and shall state specifically the types of complaints covered and excluded. At a minimum, the grievance procedure shall permit complaints by inmates regarding policies and conditions within the jurisdiction of the institution or the correctional agency that affect them personally, as well as actions by employees and inmates, and incidents occurring within the institution that affect them personally. The grievance procedure shall not be used as a disciplinary procedure.

§ 40.6 Remedies.

The grievance procedure shall afford a successful grievant a meaningful remedy. Although available remedies may vary among institutions, a reasonable range of meaningful remedies in each institution is necessary.

§ 40.7 Operation and decision.

(a) *Initiation.* The institution may require an inmate to attempt informal resolution before the inmate files a grievance under this procedure. The procedure for initiating a grievance shall be simple and include the use of a standard form. Necessary materials shall be freely available to all inmates and assistance shall be readily available for inmates who cannot complete the forms themselves. Forms shall not demand unnecessary technical compliance with formal structure or detail, but shall encourage a simple and straightforward statement of the inmate's grievance.

(b) *Inmate and employee participation.* The institution shall provide a role for employees and inmates in the operation of the system in such a manner as to promote the credibility of the grievance procedure. At a minimum, some employees and inmates shall be permitted to participate in an advisory capacity in the disposition of grievances challenging general policy and practices and to review the effectiveness and credibility of the grievance procedure. In any instance in which inmates and employees are afforded an advisory role in the disposition of an individual grievance, the opportunity for such participation shall occur before the initial adjudication of the grievance. Such participation may be limited to advisory comment on policy questions which are raised or implicated in a grievance, without identification of individual names or specific facts. No inmate shall participate in the resolution of any other inmate's grievance over the objection of the grievant. In-person hearings and formally established inmate-employee committees are permitted, but are not required as part of the grievance procedure.

(c) *Investigation and consideration.* No inmate or employee who appears to be involved in the matter shall participate in any capacity in the resolution of the grievance.

(d) *Reasoned, written responses.* Each grievance shall be answered in writing at each level of decision and review. The response shall state the reasons for the decision reached and shall include a statement that the inmate is entitled to further review, if such is available, and shall contain simple directions for obtaining such review.

(e) *Fixed time limits.* Responses shall be made within fixed time limits at each level of decision. Time limits may vary between institutions, but expeditious processing of grievances at each level of decision is essential to prevent grievances from becoming moot. In all instances grievances must be processed from initiation to final disposition within 90 days, unless the grievant agrees in writing to an extension for a fixed period. Expiration of a time limit at any stage of the process shall entitle the grievant to move to the next stage of the process, unless the grievant has agreed in writing to an extension of the time for a response.

(f) *Review.* The grievant shall be entitled to review by a person or other entity, not under the institution's supervision or control, of the disposition of all grievances, including alleged reprisals by an employee against an inmate. A request for review shall be allowed automatically without interference by administrators or employees of the institution and such review shall be conducted without influence or interference by administrators or employees of the institution.

§ 40.8 Emergency procedure.

The grievance procedure shall contain special provision for responding to grievances of an emergency nature. Emergency grievances shall be defined, at a minimum, as matters regarding which disposition according to the regular time limits would subject the inmate to a substantial risk of personal injury, or cause other serious and irreparable harm to the inmate. Emergency grievances shall be forwarded immediately, without substantive review, to the level at which corrective action can be taken. The procedure for resolving emergency grievances shall provide for expedited responses at evey level of decision. The emergency procedure shall also include review by a person or entity not under the supervision or control of the institution.

§ 40.9 Reprisals.

The grievance procedure shall prohibit reprisals. "Reprisal" means any action or threat of action against anyone for the good faith use of or good faith participation in the grievance procedure. The written procedure shall include asurance that good faith use of or good faith participation in the grievance mechanism will not result in formal or informal reprisal. An inmate shall be entitled to pursue through the grievance procedure a complaint that a reprisal occurred.

§ 40.10 Records—nature; confidentiality.

(a) *Nature.* Records regarding the filing and disposition of grievances shall be collected and maintained systematically by the institution. Such records shall be preserved for at least three years following final disposition of the grievance. At a minimum, such records shall include aggregate information regarding the numbers, types and dispositions of grievances, as well as individual records of the date of and the reasons for each disposition at each stage of the procedure.

(b) *Confidentiality.* Records regarding the participation of an individual in the grievance proceedings shall be considered confidential and shall be handled under the same procedures used to protect other confidential case records. Consistent with ensuring confidentiality, staff who are participating in the disposition of a grievance shall have access to records essential to the resolution of the grievance.

Subpart B—Procedures for Obtaining Certification of a Grievance Procedure

§ 40.11 Submissions by applicant.

An application for certification shall be submitted to the Office of the Associate Attorney General, Department of Justice, Main Justice Building, Washington, D.C. 20530, and shall contain the following:

(a) *Written statement.* A written statement describing the grievance procedure, including a brief description of the institution or institutions covered by the procedure, with accompanying plans for or evidence of implementation in each institution.

(b) *Instructional materials.* A copy of the instructional materials for inmates and employees regarding use of the grievance procedure together with a description of the manner in which such materials are distributed, a description of the oral explanation of the grievance procedure, including the circumstances under which it is delivered, and a description of the training, if any, provided to employees and inmates in the skills necessary to operate the grievance procedure.

(c) *Form.* A copy of the form used by inmates to initiate a grievance and to obtain review of the disposition of a grievance.

(d) *Information regarding past performance.* For a procedure that has operated for more than one year at the time of the application, the applicant shall submit information regarding the number and types of grievances filed over the preceding year, the disposition of the grievances with sample responses from each level of decision, the remedies granted, evidence of compliance with time limits at each level of decision, and a description of the role of inmates and employees in the formulation, implementation, and operation of the grievance procedure.

(e) *Plan for collecting information.* For a procedure that has operated for less than one year at the time of the application, the applicant shall submit a plan for collecting the information described in paragraph (d) of this section.

(f) *Assurance of confidentiality.* A description of the steps taken to ensure the confidentiality of records of individual use of or participation in the grievance procedure.

(g) *Evaluation.* A description of the plans for periodic evaluation of the grievance procedure, including identification of the group, individuals or individual who will conduct the evaluation and identification of the person or entity not under the control or supervision of the institution who will review the evaluation, together with two copies of the most recent evaluation, if one has been performed.

§ 40.12 Notice of intent to apply for certification.

The applicant shall post notice of its intent to request certification in prominent places in each institution to be covered by the procedure and shall provide similar written notice to the U.S. District Court(s) having jurisdiction over each institution to be covered by the procedure. The notices shall invite comments regarding the grievance procedure and direct them to the Attorney General.

§ 40.13 Review by the Attorney General.

The Attorney General shall review and respond to each application as promptly as the circumstances, including the need for independent investigation and consideration of the comments of agencies, and interested groups and persons, permit.

§ 40.14 Conditional certification.

If, in the judgment of the Attorney General, a grievance procedure that has been in existence less than one year is at the time of application in substantial compliance with the standards promulgated herein, the Attorney General shall grant conditional certification for one year or until the applicant satisfies the requirements of § 40.15, whichever period is shorter.

§ 40.15 Full certification.

If, in the judgment of the Attorney General, a grievance procedure that has been in existence longer than one year at the time of application is in substantial compliance with the standards promulgated herein, full certification shall be granted. Such certification shall remain in effect unless and until the Attorney General finds reasonable cause to believe that the grievance procedure is no longer in substantial compliance with the minimum standards and so notifies the applicant in writing.

§ 40.16 Denial of certification.

If the Attorney General finds that the grievance procedure is not in substantial compliance with the standards promulgated herein, the Attorney General shall deny certification and inform the applicant in writing of the area or areas in which the grievance procedure or the application is deemed inadequate.

§ 40.17 Reapplication after denial of certification.

An applicant denied certification may resubmit an application for certification at any time after the inadequacy in the application or the grievance procedure is corrected.

§ 40.18 Suspension of certification.

(a) *Reasonable belief of non-compliance.* If the Attorney General has reasonable grounds to believe that a previously certified grievance procedure may no longer be in substantial compliance with the minimum standards, the Attorney General shall suspend certification. The suspension shall continue until such time as the deficiency is corrected, in which case certification shall be reinstated, or until the Attorney General determines that substantial compliance no longer exists, in which case, except as provided in paragraph (b) of this section, the Attorney General shall withdraw certification pursuant to § 40.19 of this part.

(b) *Defect may be readily remedied; good faith effort.* If the Attorney General determines that a grievance procedure is no longer in substantial compliance with the minimum standards, but has reason to believe that the defect may be readily corrected and that good faith efforts are underway to correct it, the Attorney General may suspend certification until the grievance procedure returns to compliance with the minimum standards.

(c) *Recertification after suspension pursuant to paragraph (a) of this section.* The Attorney General shall reinstate the certification of an appliant whose certification was suspended pursuant to paragraph (a) of this section upon a demonstration in writing by the applicant that the specific deficiency on which the suspension was based has been corrected or that the information that caused the Attorney General to suspend certification was erroneous.

(d) *Recertification after suspension pursuant to paragraph (b) of this section.* The Attorney General shall reinstate the certification of an applicant whose certification has been suspended pursuant to paragraph (b) of this section upon a demonstration in writing that the deficiency on which the suspension was based has been corrected.

(e) *Notification in writing of suspension or reinstatement.* The Attorney General shall notify an applicant in writing that certification has been suspended or reinstated and state the reasons for the action.

§ 40.19 Withdrawal of certification.

(a) *Finding of non-compliance.* If the Attorney General finds that a grievance procedure is no longer in substantial compliance with the minimum standards, the Attorney General shall withdraw certification, unless the Attorney General concludes that suspension of certification under § 40.18(b) of this part is appropriate.

(b) *Notification in writing of withdrawal of certification.* The Attorney General shall notify an applicant in writing that certification has been withdrawn and state the reasons for the action.

(c) *Recertification after withdrawal.* An applicant whose certification has been withdrawn and who wishes to receive recertification shall submit a new application for certification.

§ 40.20 Contemplated change in certified procedure.

A proposed change in a certified procedure must be submitted to the Attorney General thirty days in advance of its proposed effective date. The Attorney General shall review such proposed change and notify the applicant in writing before the effective date of the proposed change if such change will result in suspension or withdrawal of the certification of the grievance procedure.

§ 40.21 Notification of court.

The Attorney General shall notify in writing the Chief Judges of the United States Court of Appeals and of the United States District Court(s) within whose jurisdiction the applicant is located of the certification, suspension of certification, withdrawal of certification and recertification of the applicant's grievance procedure. The Attorney General shall also notify the court of the certification status of any grievance procedure at the request of the court or any party in an action by an adult inmate pursuant to 42 U.S.C. 1983.

§ 40.22 Significance of certification.

Certification of a grievance procedure by the Attorney General shall signify only that on the basis of the information submitted, the Attorney General believes the grievance procedure is in substantial compliance with the minimum standards. Certification shall not indicate approval of the use or application of the grievance procedure in a particular case.

PART 41—IMPLEMENTATION OF EXECUTIVE ORDER 12250, NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS

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APPENDIX A—LEADERSHIP AND COORDINATION OF NONDISCRIMINATION LAWS

AUTHORITY: Executive Order 12250, 45 FR 72995; sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706).

SOURCE: 43 FR 2132, Jan. 13, 1978, unless otherwise noted. Redesignated and amended at 46 FR 40686, 40687, Aug. 11, 1981.

EDITORIAL NOTE: At 46 FR 40687, Aug. 11, 1981, application of Part 41 with respect to mass transportation is suspended until further notice.

Subpart A—Federal Agency Responsibilities

§ 41.1 Purpose.

The purpose of this part is to implement Executive Order 12250, which requires the Department of Justice to coordinate the implementation of section 504 of the Rehabilitation Act of 1973.

[43 FR 2132, Jan. 13, 1978. Redesignated and amended at 46 FR 40686, 40687, Aug. 11, 1981]

§ 41.2 Application.

This part applies to each Federal department and agency that is empowered to extend Federal financial assistance.

§ 41.3 Definitions.

As used in this regulation, the term:

(a) "Executive Order" means Executive Order 12250, titled "Leadership and Coordination of Nondiscrimination Laws," issued November 2, 1980.

(b) "Section 504" means section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(c) "Agency" means a Federal department or agency that is empowered to extend financial assistance.

(d) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(e) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(f) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

[43 FR 2132, Jan. 13, 1978. Redesignated and amended at 46 FR 40686, 40687, Aug. 11, 1981]

§ 41.4 Issuance of agency regulations.

(a) Each agency shall issue, after notice and opportunity for comment, a regulation to implement section 504 with respect to the programs and activities to which it provides assistance. The regulation shall be consistent with this part.

(b) Each agency shall issue a notice of proposed rulemaking no later than 90 days after the effective date of this part. Each agency shall issue a final regulation no later than 135 days after the end of the period for comment on its proposed regulation: *Provided,* That the agency shall submit its proposed final regulation to the Assistant Attorney General, Civil Rights Division, Department of Justice, for review at least 45 days before it is to be issued.

(c) Each such agency regulation shall: (1) Define appropriate terms, consistent with the definitions set forth in § 41.3 and with the standards for determining who are handicapped persons set forth in Subpart B of this Part; and (2) prohibit discriminatory practices against qualified handicapped persons in employment and in the provision of aid, benefits, or services, consistent with the guidelines set forth in Subpart C of this Part. The regulation shall include, where appropriate, specific provisions adapted to the particular programs and activities receiving financial assistance from the agency.

[43 FR 2132, Jan. 13, 1978. Redesignated and amended at 46 FR 40686, 40687, Aug. 11, 1981]

§ 41.5 Enforcement.

(a) Each agency shall establish a system for the enforcement of section 504 and its implementing regulation with respect to the programs and activities to which it provides assistance. The system shall include: (1) The enforcement and hearing procedures that the agency has adopted for the enforcement of title VI of the Civil Rights Act of 1964, and (2) a requirement that recipients sign assurances of compliance with section 504.

(b) Each agency regulation shall also include requirements that recipients: (1) Notify employees and beneficiaries of their rights under section 504, (2) conduct a self-evaluation of their compliance with section 504, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, and (3) otherwise consult with interested persons, including handicapped persons or organizations representing handicapped persons, in achieving compliance with section 504.

§ 41.6 Interagency cooperation.

(a) Where each of a substantial number of recipients is receiving assistance for similar or related purposes from two or more agencies or where two or more agencies cooperate in administering assistance for a given class of recipients, the agencies shall: (1) Coordinate compliance with section 504, and (2) designate one of the agencies as the primary agency for section 504 compliance purposes.

(b) Any agency conducting a compliance review or investigating a compliant of an alleged section 504 violation shall notify any other affected agency upon discovery of its jurisdiction and shall inform it of the findings made. Reviews or investigations may be made on a joint basis.

§ 41.7 Coordination with sections 502 and 503.

(a) Agencies shall consult with the Architectural and Transportation Barriers Compliance Board in developing requirements for the accessibility of new facilities and alterations, as required in § 41.58, and shall coordinate with the Board in enforcing such requirements with respect to facilities that are subject to section 502 of the Rehabilitation Act of 1973, as amended, as well as to section 504.

(b) Agencies shall coordinate with the Department of Labor in enforcing requirements concerning employment discriminination with respect to recipients that are also federal contractors subject to section 503 of the Rehabilitation Act of 1973, as amended.

§§ 41.8–41.30 [Reserved]

Subpart B—Standards for Determining Who Are Handicapped Persons

§ 41.31 Handicapped person.

(a) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(b) As used in paragraph (a) of this section, the phrase:

(1) "Physical or mental impairment" means: (i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking,

seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means: (i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (iii) has none of the impairments defined in paragraph (b)(1) of this section but is treated by a recipient as having such an impairment.

§ 41.32 Qualified handicapped person.

"Qualified handicapped person" means: (a) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question and (b) with respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

§§ 41.33–41.50 [Reserved]

Subpart C—Guidelines for Determining Discriminatory Practices

GENERAL

§ 41.51 General prohibitions against discrimination.

(a) No qualified handicapped person, shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

(b)(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration: (i) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetu-

ate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(4) A recipient may not, in determining the site or location of a facility, make selections: (i) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

(d) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

EMPLOYMENT

§ 41.52 General prohibitions against employment discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives or benefits from federal financial assistance.

(b) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

§ 41.53 Reasonable accommodation.

A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

§ 41.54 Employment criteria.

A recipient may not use employment tests or criteria that discriminate against handicapped persons and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

§ 41.55 Preemployment inquiries.

A recipient may not conduct a preemployment medical examination or make a preemployment inquiry as to whether an applicant is a handicapped person or as to the nature or severity of a handicap except under the circumstances described in 28 CFR 42.513.

[43 FR 2132, Jan. 13, 1978. Redesignated and amended at 46 FR 40686, 40687, Aug. 11, 1981]

PROGRAM ACCESSIBILITY

§ 41.56 General requirement concerning program accessibility.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

§ 41.57 Existing facilities.

(a) A recipient shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons.

(b) Where structural changes are necessary to make programs or activities in existing facilities accessible, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of the agency regulation: *Provided*, That, if the program is a particular mode of transportation (e.g., a subway system) that can be made accessible only through extraordinarily expensive structural changes to, or replacement of, existing facilities and if other accessible modes of transportation are available, the federal agency responsible for enforcing section 504 with respect to that program may extend this period of time, but only for a reasonable and definite period, such period to be set forth in the agency's regulation.

(c) In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within a definite period to be established in each agency's regulation, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons.

§ 41.58 New construction.

(a) Except as provided in paragraph (b) of this section, new facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(b) The Department of Transportation may defer the effective date for requiring all new buses to be accessible if it concludes on the basis of its section 504 rulemaking process that it is not feasible to require compliance on the effective date of its regulation: *Provided*, That comparable, accessible services are available to handicapped persons in the interim and that the date is not deferred later than October 1, 1979.

§§ 41.59–41.99 [Reserved]

APPENDIX A—LEADERSHIP AND COORDINATION OF NONDISCRIMINATION LAWS

EXECUTIVE ORDER 12250, Nov. 2, 1980

By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), and Section 301 of Title 3 of the United States Code, and in order to provide, under the leadership of the Attorney General, for the consistent and effective implementation of various laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance, it is hereby ordered as follows:

1-1. *Delegation of Function.*

1-101. The function vested in the President by Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1-102. The function vested in the President by Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1-2. *Coordination of Nondiscrimination Provisions.*

1-201. The Attorney General shall coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions of the following laws:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*).

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

(d) Any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

1-202. In furtherance of the Attorney General's responsibility for the coordination of the implementation and enforcement of the nondiscrimination provisions of laws covered by this Order, the Attorney General shall review the existing and proposed rules, regulations, and orders of general applicability of the Executive agencies in order to identify those which are inadequate, unclear or unnecessarily inconsistent.

1-203. The Attorney General shall develop standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews.

1-204. The Attorney General shall issue guidelines for establishing reasonable time limits on efforts to secure voluntary compliance, on the initiation of sanctions, and for referral to the Department of Justice for enforcement where there is noncompliance.

1-205. The Attorney General shall establish and implement a schedule for the review of the agencies' regulations which implement the various nondiscrimination laws covered by this Order.

1-206. The Attorney General shall establish guidelines and standards for the development of consistent and effective recordkeeping and reporting requirements by Executive agencies; for the sharing and exchange by agencies of compliance records, findings, and supporting documentation; for the development of comprehensive employee training programs; for the development of effective information programs; and for the development of cooperative programs with State and local agencies, including sharing of information, deferring of enforcement activities, and providing technical assistance.

1-207. The Attorney General shall initiate cooperative programs between and among agencies, including the development of sample memoranda of understanding, designed to improve the coordination of the laws covered by this Order.

1-3. *Implementation by the Attorney General.*

1-301. In consultation with the affected agencies, the Attorney General shall promptly prepare a plan for the implementation of this Order. This plan shall be submitted to the Director of the Office of Management and Budget.

1-302. The Attorney General shall periodically evaluate the implementation of the nondiscrimination provisions of the laws covered by this Order, and advise the heads of the agencies concerned on the results of such evaluations as to recommendations for needed improvement in implementation or enforcement.

1-303. The Attorney General shall carry out his functions under this Order, including the issuance of such regulations as he deems necessary, in consultation with affected agencies.

1-304. The Attorney General shall annually report to the President through the Director of the Office of Management and Budget on the progress in achieving the purposes of this Order. This report shall include any recommendations for changes in the implementation or enforcement of the nondiscrimination provisions of the laws covered by this Order.

1-305. The Attorney General shall chair the Interagency Coordinating Council established by Section 507 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794c).

1-4. *Agency Implementation.*

1-401. Each Executive agency shall cooperate with the Attorney General in the performance of the Attorney General's functions under this Order and shall, unless prohibited by law, furnish such reports and information as the Attorney General may request.

1-402. Each Executive agency responsible for implementing a nondiscrimination provision of a law covered by this Order shall issue appropriate implementing directives (whether in the nature of regulations or policy guidance). To the extent permitted by law, they shall be consistent with the requirements prescribed by the Attorney General pursuant to this Order and shall be subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect.

1-403. Within 60 days after a date set by the Attorney General, Executive agencies shall submit to the Attorney General their plans for implementing their responsibilities under this Order.

1-5. *General Provisions.*

1-501. Executive Order No. 11764 is revoked. The present regulations of the Attorney General relating to the coordination of enforcement of Title VI of the Civil Rights Act of 1964 shall continue in effect until revoked or modified (28 CFR 42.401 to 42.415).

1-502. Executive Order No. 11914 is revoked. The present regulations of the Secretary of Health and Human Services relating to the coordination of the implementation of Section 504 of the Rehabilitation Act of 1973, as amended, shall be deemed to have been issued by the Attorney General pursuant to this Order and shall continue in effect until revoked or modified by the Attorney General.

1-503. Nothing in this Order shall vest the Attorney General with the authority to coordinate the implementation and enforcement by Executive agencies of statutory provisions relating to equal employment.

1-504. Existing agency regulations implementing the nondiscrimination provisions of laws covered by this Order shall continue in effect until revoked or modified.

JIMMY CARTER

The White House,
November 2, 1980.

[47 FR 32421, July 27, 1982]

PART 42—NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY; POLICIES AND PROCEDURES

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Subpart A—Equal Employment Opportunity Within the Department of Justice

AUTHORITY: 5 U.S.C. 301, 28 U.S.C. 509, 510 E.O. 11246, 3 CFR, 1964-1965 Comp., E.O. 11375, 3 CFR, 1967 Comp.

§ 42.1 Policy.

It is the policy of the Department of Justice to seek to eliminate discrimination on the basis of race, color, religion, sex, national origin, political affiliation, marital status, physical or mental handicap, or age in employment within the Department and to assure equal employment opportunity for all employees and applicants for employment in the Department, in conformity with the policies and requirements of Executive Order No. 11478 of August 8, 1969, relating to equal employment opportunity in the Federal Government, the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-16), the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 633a); the Rehabilitation Act of 1973, as amended (29 U.S.C. 791), the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 2014), and the regulations of the Equal Employment Opportunity Commission which are recodified as 29 CFR 1613.201-806 relating to equal employment opportunity.

[Order No. 960-81, 46 FR 52357, Oct. 27, 1981]

§ 42.2 Designation of Director of Equal Employment Opportunity and Complaint Adjudication Officer.

(a) In compliance with the regulations of the Equal Employment Opportunity Commission (29 CFR

1613.204(c)), the Assistant Attorney General for Administration is hereby designated as Director of Equal Employment Opportunity for the Department of Justice with responsibilities for administration of the Equal Employment Opportunity Program within the Department. The Director of Equal Employment Opportunity shall publish and implement the Department of Justice regulations, which shall include a positive action program to eliminate causes of discrimination and shall include procedures for processing complaints of discrimination within the Department.

(b) The Assistant Attorney General in charge of the Civil Rights Division shall appoint a Complaint Adjudication Officer, who shall render final decisions for the Department of Justice on complaints of discrimination filed by employees and applicants for employment in the Department pursuant to the Department's Equal Employment Opportunity Regulations. In rendering decisions, the Complaint Adjudication Officer shall order such remedial action as may be appropriate, whether or not there is a finding of discrimination, but in cases where no discrimination is found any remedial action ordered shall have the prior approval of the Assistant Attorney General in charge of the Civil Rights Division, who shall consult with the Deputy Attorney General on the matter.

[Order No. 420-69, 34 FR 12281, July 25, 1969, as amended by Order No. 721-77, 42 FR 25725, May 19, 1977; Order No. 731-77, 42 FR 35646, July 11, 1977; Order No. 899-80, 45 FR 43703, June 30, 1980; Order No. 960-81, 46 FR 52357, Oct. 27, 1981]

§ 42.3 Responsibility for Department of Justice Equal Opportunity Recruitment Program.

The Assistant Attorney General for Administration shall be responsible for establishing and implementing the Department of Justice Equal Opportunity Recruitment Program under 5 U.S.C. 7201.

[Order No. 865-79, 44 FR 77157, Dec. 31, 1979, as amended by Order No. 960-81, 46 FR 52357, Oct. 27, 1981]

Subpart B—[Reserved]

Subpart C—Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of the Civil Rights Act of 1964[1]

AUTHORITY: Secs. 601-605, 78 Stat. 252, secs. 1-11, 79 Stat. 828, 80 Stat. 379; 42 U.S.C. 2000d-2000d-4, 18 U.S.C. Prec. 3001 note, 5 U.S.C. 301, sec. 2, Reorganization Plan No. 2 of 1950, 64 Stat. 1261; 3 CFR, 1949-1953 Comp.

SOURCE: Order No. 365-66, 31 FR 10265, July 29, 1966, unless otherwise noted.

§ 42.101 Purpose.

The purpose of this subpart is to implement the provisions of Title VI of the Civil Rights Act of 1964, 78 Stat. 252 (hereafter referred to as the "Act"), to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Justice.

§ 42.102 Definitions.

As used in this subpart—

(a) The term "responsible Department official" with respect to any program receiving Federal financial assistance means the Attorney General, or Deputy Attorney General, or such other official of the Department as has been assigned the principal responsibility within the Department for the administration of the law extending such assistance.

(b) The term "United States" includes the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and all other territories and possessions of the United States, and the term "State" includes any one of the foregoing.

(c) The term "Federal financial assistance" includes: (1) Grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

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[1] See also 28 CFR 50.3. Guidelines for enforcement of Title VI, Civil Rights Act.

(d) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, rehabilitation, or other services or disposition, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid, or other benefits to individuals. The disposition, services, financial aid, or benefits provided under a program receiving Federal financial assistance shall be deemed to include any disposition, services, financial aid, or benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any disposition, services, financial aid, or benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(e) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.

(f) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(g) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(h) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

(i) The term "academic institution" includes any school, academy, college, university, institute, or other association, organization, or agency conducting or administering any program, project, or facility designed to educate or train individuals.

(j) The term "disposition" means any treatment, handling, decision, sentencing, confinement, or other prescription of conduct.

(k) The term "governmental organization" means the political subdivision for a prescribed geographical area.

[Order No. 365-66, 31 FR 10265, July 29, 1966, as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 960-81, 46 FR 52357, Oct. 27, 1981]

§ 42.103 Application of this subpart.

This subpart applies to any program for which Federal financial assistance is authorized under a law administered by the Department. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the date of this subpart pursuant to an application whether approved before or after such date. This subpart does not apply to: (a) Any Federal financial assistance by way of insurance or guaranty contracts, or (b) employment practices except to the extent described in § 42.104(c).

[Order No. 365-66, 31 FR 10265, July 29, 1966, as amended by Order No. 519-73, 38 FR 17955, July 5, 1973]

§ 42.104 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this subpart applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this subpart applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny an individual any disposition, service, financial aid, or benefit provided under the program;

(ii) Provide any disposition, service, financial aid, or benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any disposition, service, financial aid, or benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, financial aid, or benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any disposition, service, financial aid, function or benefit provided under the program; or

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the type of disposition, services, financial aid, benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this subpart applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this subpart.

(4) For the purposes of this section the disposition, services, financial aid, or benefits provided under a program receiving Federal financial assistance shall be deemed to include any portion of any program or function or activity conducted by any recipient of Federal financial assistance which program, function, or activity is directly or indirectly improved, enhanced, enlarged, or benefited by such Federal financial assistance or which makes use of any facility, equipment or property provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in

this paragraph and in paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6) (i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(c) *Employment practices.* (1) Whenever a primary objective of the Federal financial assistance to a program to which this subpart applies, is to provide employment, a recipient of such assistance may not (directly or through contractual or other arrangements) subject any individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff, or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities). That prohibition also applies to programs as to which a primary objective of the Federal financial assistance is (i) to assist individuals, through employment, to meet expenses incident to the commencement or continuation of their education or training, or (ii) to provide work experience which contributes to the education or training of the individuals involved. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(2) In regard to Federal financial assistance which does not have providing employment as a primary objective, the provisions of paragraph (c)(1) of this section apply to the employment practices of the recipient if discrimination on the ground of race, color, or national origin in such employment practices tends, on the ground of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of or to subject them to discrimination under the program receiving Federal financial assistance. In any such case, the provisions of paragraph (c)(1) of this section shall apply to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

[Order No. 365-66, 31 FR 10265, July 29, 1966, as amended by Order No. 519-73, 38 FR 17955, July 5, 1973]

§ 42.105 Assurance required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this subpart applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this subpart. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, such assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases, such assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible Department official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors, and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United

States a right to seek its judicial enforcement.

(2) In the case of real property, structures or improvements thereon, or interest therein, which was acquired through a program of Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer shall contain a convenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter are appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee.

(b) *Assurances from government agencies.* In the case of any application from any department, agency, or office of any State or local government for Federal financial assistance for any specified purpose, the assurance required by this section, shall extend to any other department, agency, or office of the same governmental unit if the policies of such other department, agency, or office will substantially affect the project for which Federal financial assistance is requested. That requirement may be waived by the responsible Department official if the applicant establishes, to the satisfaction of the responsible Department official, that the practices in other agencies of parts or programs of the governmental unit will in no way affect: (1) Its practices in the program for which Federal financial assistance is sought, or (2) the beneficiaries of or participants in or persons affected by such program, or (3) full compliance with the subpart as respects such program.

(c) *Assurance from academic and other institutions.* (1) In the case of any application for Federal financial assistance for any purpose to an academic institution, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an academic institution, detention or correctional facility, or any other institution or facility, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to such individuals, shall be applicable to the entire institution or facility unless the applicant establishes, to the satisfaction of the responsible Department official, that the practices in designated parts or programs of the institution or facility will in no way affect its practices in the program of the institution or facility for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If, in any such case, the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(d) *Continuing State programs.* Any State or State agency administering a program which receives continuing Federal financial assistance subject to this regulation shall as a condition for the extension of such assistance: (1) Provide a statement that the program is (or, in the case of a new program, will be) conducted in compliance with this regulation, and (2) provide for such methods of administration as are found by the responsible Department official to give reasonable assurance that the primary recipient and all other recipients of Federal financial assistance under such program will comply with this regulation.

[Order No. 365-66, 31 FR 10265, July 29, 1966, as amended by Order No. 519-73, 38 FR 17955, July 5, 1973]

§ 42.106 Compliance information.

(a) *Cooperation and assistance.* Each responsible Department official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this subpart and shall provide assistance and guidance to recipients to help them comply voluntarily with this subpart.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this subpart. In general, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient or subcontracts with any other person or group, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this subpart.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities, as may be pertinent to ascertain compliance with this subpart. Whenever any information required of a recipient is in the exclusive possession of any other agency, institution, or person and that agency, institution, or person fails or refuses to furnish that information, the recipient shall so certify in its report and set forth the efforts which it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this subpart and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this subpart.

[Order No. 365-66, 31 FR 10265, July 29, 1966, as amended by Order No. 519-73, 38 FR 17955, July 5, 1973]

§ 42.107 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this subpart.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this subpart may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this subpart. The investigation should include, whenever appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this subpart occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this subpart.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph

(c) of this section indicates a failure to comply with this subpart, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 42.108.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this subpart, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subpart. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purpose of this subpart, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

[Order No. 365-66, 31 FR 10265, July 29, 1966, as amended by Order No. 519-73, 38 FR 17955, July 5, 1973]

§ 42.108 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this subpart and if the noncompliance or threatened noncompliance cannot be corrected by informal means, the responsible Department official may suspend or terminate, or refuse to grant or continue, Federal financial assistance, or use any other means authorized by law, to induce compliance with this subpart. Such other means include, but are not limited to: (1) Appropriate proceedings brought by the Department to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with assurance requirement.* If an applicant or recipient fails or refuses to furnish an assurance required under § 42.105, or fails or refuses to comply with the provisions of the assurance it has furnished, or otherwise fails or refuses to comply with any requirement imposed by or pursuant to Title VI or this subpart, Federal financial assistance may be suspended, terminated, or refused in accordance with the procedures of Title VI and this subpart. The Department shall not be required to provide assistance in such a case during the pendency of administrative proceedings under this subpart, except that the Department will continue assistance during the pendency of such proceedings whenever such assistance is due and payable pursuant to a final commitment made or an application finally approved prior to the effective date of this subpart.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until: (1) The responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this subpart, (3) the action has been approved by the Attorney General pursuant to § 42.110, and (4) the expiration of 30 days after the Attorney General has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until: (1) The responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Attorney General, and (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance.

§ 42.109 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 42.108(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. That notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for that action. The notice shall (1) fix a date, not less than 20 days after the date of such notice, within which the applicant or recipient may request that the responsible Department official schedule the matter for hearing, or (2) advise the applicant or recipient that a hearing concerning the matter in question has been scheduled and advise the applicant or recipient of the place and time of that hearing. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing afforded by section 602 of the Act and § 42.108(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official, unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the responsible Department official or, at his discretion, before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied whenever reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this subpart with respect to two or more programs to which this subpart applies, or noncompliance with this subpart and the regulations of one or more other Federal Departments or agencies issued under Title VI of the Act, the Attorney General may, by agreement with such other departments or agencies, whenever appropriate, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this subpart. Final decisions in such cases, insofar as this subpart is concerned, shall be made in accordance with § 42.110.

[Order No. 365-66, 31 FR 10265, July 29, 1966, as amended by Order No. 519-73, 38 FR 17955, July 5, 1973]

§ 42.110 Decisions and notices.

(a) *Decisions by person other than the responsible Department official.* If the hearing is held by a hearing examiner, such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record, including his recommended findings and proposed decision, to the responsible Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Whenever the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days of the mailing of such notice of initial decision, file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. Upon filing of such exceptions, or of such notice of review, the responsible Department official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official.

(b) *Decisions on the record or on review by the responsible Department official.* Whenever a record is certified to the responsible Department official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible Department official conducts the hearing, the applicant or recipient shall be given a reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on the record whenever a hearing is waived.* Whenever a hearing is waived pursuant to § 42.109(a), a decision shall be made by the responsible Department official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible Department official shall set forth his ruling on each findings, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this subpart with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Attorney General.* Any final decision of a responsible Department official (other than the Attorney General) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this subpart or the Act, shall promptly be transmitted to the Attorney General, who may approve such decision, vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue, Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with, and will effectuate the purposes of, the Act and this subpart, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this subpart, or to have otherwise failed to comply with this subpart, unless and until, it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this subpart.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this subpart and provides reasonable assurance that it will fully comply with this subpart.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Department official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

[Order No. 365-66, 31 FR 10265, July 29, 1966, as amended by Order No. 519-73, 38 FR 17956, July 5, 1973]

§ 42.111 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 42.112 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* Nothing in this subpart shall be deemed to supersede any provision of Subpart A or B of this part or Executive Order 11114 or 11246, as amended, or of any other regulation or instruction which prohibits discrimination on the ground of race, color, or national origin in any program or situation to which this subpart is inapplicable, or which prohibits discrimination on any other ground.

(b) *Forms and instructions.* Each responsible Department official, other than the Attorney General or Deputy Attorney General, shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this subpart as applied to programs to which this subpart applies and for which he is responsible.

(c) *Supervision and coordination.* The Attorney General may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this subpart (other than responsibility for final decision as provided in § 42.110(e)), including the achievement of the effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI of the Act and this subpart to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the Attorney General.

[Order No. 365-66, 31 FR 10265, July 29, 1966, as amended by Order No. 519-73, 38 FR 17956, July 5, 1973; Order No. 568-74, 39 FR 18646, May 29, 1974]

Appendix A to Subpart C—Assistance Administered by the Department of Justice to Which This Subpart Applies

1. Assistance provided by the Law Enforcement Assistance Administration pursuant to the Law Enforcement Assistance Act of 1965, and Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Omnibus Crime Control Act of 1970, 42 U.S.C. 3711-3781.

2. Assistance provided by the Federal Bureau of Investigation through its National Academy and law enforcement training activities pursuant to title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Omnibus Crime Control Act of 1970, 42 U.S.C. 3744.

3. Assistance provided by the Drug Enforcement Administration pursuant to the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 872.

[Order No. 519-73, 38 FR 17956, July 5, 1973, as amended by Order No. 899-80, 45 FR 43703, June 30, 1980]

Subpart D—Nondiscrimination in Federally Assisted Programs—Implementation of Section 815(c)(1) of the Justice System Improvement Act of 1979

Authority: Secs. 802(a), 815(c), and 817(d) of the Justice System Improvement Act of 1979, 42 U.S.C. 3701, *et seq.*, as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-503, and Pub. L. 96-157 (December 27, 1979) (JSIA) and Sec. 262 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5672 (Pub. L. 93-415, as amended by Pub. L. 95-115)).

Source: 45 FR 28705, Apr. 30, 1980, unless otherwise noted.

§ 42.201 Purpose and application.

(a) The purpose of this subpart is to implement the provisions of section 815(c) of the Justice System Improvement Act of 1979 (42 U.S.C. 3789d(c); Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; and Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*, to the end that no person in any State shall on the ground of race, color, national origin, sex, or religion be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity funded in whole or in part with funds made available under either the Justice System Improvement Act or the Juvenile Justice Act by the Law Enforcement Assistance Administration, the National Institute of Justice, or the Bureau of Justice Statistics. These regulations also implement Executive Order 12138, which requires all Federal agencies awarding financial assistance to take certain steps to advance women's business enterprise.

(b) The regulations in this subpart apply to the delivery of services by, and employment practices of recipients administering, participating in, or substantially benefiting from any program or activity receiving Federal financial assistance extended under the Justice System Improvement Act of 1979, or the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

(c) Where a private recipient which receives such assistance through a unit of government is engaged in prohibited discrimination, the Office of Justice Assistance, Research, and Statistics will invoke the enforcement procedures of this subpart (Sections 42.208, *et seq.*) against the appropriate unit of government for failure to enforce the assurances of nondiscrimination given it by the private recipient pursuant to § 42.204(a). Where a private recipient receives assistance either directly from the Law Enforcement Assistance Administration, the National Institute of Justice, or the Bureau of Justice Statistics or through another private entity which receives funds directly from one of those agencies, compliance will be enforced pursuant to section 803(a) of the Justice System Improvement Act.

§ 42.202 Definitions.

(a) "JSIA" means the Justice System Improvement Act of 1979, Pub. L. 96-157, 42 U.S.C. 3701, *et seq.*

(b) "Juvenile Justice Act" means Title I and II of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415, as amended by Pub. L. 94-503 and Pub. L. 95-115.

(c) "OJARS" or "Office" means the Office of Justice Assistance, Research, and Statistics.

(d) "LEAA" means the Law Enforcement Assistance Administration.

(e) "NIJ" means the National Institute of Justice.

(f) "BJS" means the Bureau of Justice Statistics.

(g) "Employment practices" means all terms and conditions of employment including but not limited to, all practices relating to the screening, recruitment, referral, selection, training, appointment, promotion, demotion, and assignment of personnel, and includes advertising, hiring, assignments, classification, discipline, layoff and termination, upgrading, transfer, leave practices, rate of pay, fringe benefits, or other forms of pay or credit for services rendered and use of facilities.

(h) "Investigation" includes factfinding efforts and, pursuant to § 42.205(c)(3), attempts to secure the voluntary resolution of complaints.

(i) "Compliance review" means a review of a recipient's selected employment practices or delivery of services for compliance with the provisions of section 815(c)(1) of the Justice System Improvement Act, or this subpart.

(j) "Noncompliance" means the failure of a recipient to comply with section 815(c)(1) of the Justice System Improvement Act, or this subpart.

(k) "Program or activity" means the operation of the agency or organizational unit of government receiving or substantially benefiting from financial assistance awarded, e.g., a police department or department of corrections.

(l) "Pattern or practice" means any procedure, custom, or act affecting or potentially affecting, more than a single individual in a single or isolated instance.

(m) "Religion" includes all aspects of religious observance and practice as well as belief.

(n) "Recipient" means any State or local unit of government or agency thereof, and any private entity, institution, or organization, to which Federal financial assistance is extended directly, or through such government or agency, but such term does not include any ultimate beneficiary of such assistance.

(o) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands;

(p) "Unit of local government" means any city, county, township, town, borough, parish, village or other general purpose political subdivision of a State, an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior, or, for the purpose of assistance eligiblity, any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia;

(q) "Combination" as applied to States or units of local government means any grouping or joining together of such States or units for the purpose of preparing, developing, or implementing a criminal justice program or project;

(r) "Criminal justice council" or "CJC" means the agency designated by a State to perform the functions listed in section 402(b)(1) of the Justice System Improvement Act.

(s) All masculine terms such as "he," "his," and "him" should be construed to mean their respective feminine counterparts, "she," "hers," and "her," where appropriate.

[45 FR 28705, Apr. 30, 1980; 45 FR 54037, Aug. 14, 1980]

§ 42.203 Discrimination prohibited.

(a) No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any program or activity funded in whole or in part with funds made available under the JSIA or the Juvenile Justice Act.

(b) A recipient may not, directly or through contractual or other arrangements, on the grounds set forth in paragraph (a) of this section:

(1) Deny an individual any disposition, service, financial aid, or benefit provided under the program;

(2) Provide any disposition, service, financial aid, or benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(3) Subject an individual to segregation or separate treatment in any matter related to his receipt of any disposition, service, financial aid, or benefit under the program;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, or financial aid or benefit under the program;

(5) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any disposition, service, financial aid, function, or benefit provided under the program;

(6) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program;

(7) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program;

(8) Subject any individual to physical abuse or summary punishment, or deny any individual the rights guaranteed by the Constitution to all persons;

(9) Subject any individual to discrimination in its employment practices in connection with any program or activity funded in whole or in part with funds made available under the JSIA or the Juvenile Justice Act;

(10) Use any selection device in a manner which is inconsistent with the Department of Justice Uniform on Employee Selection Guidelines, 28 CFR 50.14.

(c) In matters involving employment discrimination, section 815(c)(1) of the JSIA shall be interpreted by the Office consistently with Title VII of the Civil Rights Act of 1964, Pub. L. 88-352, 79 Stat. 253, as amended by the Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 87 Stat. 103, and the Pregnancy Discrimination Act, Pub. L. 95-555, 92 Stat. 2076.

(d) The use of a minimum height or weight requirement which operates to disproportionately exclude women and persons of certain national origins, such as persons of Hispanic or Asian descent, is a violation of this subpart, unless the recipient is able to demonstrate convincingly, through use of supportive factual data, that the requirement has been validated as set forth in the Department of Justice Guidelines on Employee Selection Procedures, 28 CFR 50.14.

(e) A recipient, in determining the type of disposition, services, financial aid, benefits, or facilities which will be provided under any program, or the class of individuals to whom, or the situations in which, such will be provided under any program, may not directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination under section 815(c)(1) of the JSIA, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, sex, national origin, or religion.

(f) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, subjecting them to discrimination under, or denying them employment in connection with any program or activity to which this subpart applies; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the JSIA, the Juvenile Justice Act, or this subpart.

(g) For the purposes of this section, the disposition, services, financial aid, or benefits provided under a program or activity receiving Federal financial assistance shall be deemed to include any portion of any program or function or activity conducted by any recipient of Federal financial assistance which program, function, or activity is directly or indirectly improved, enhanced, enlarged, or benefited by such Federal financial assistance or which makes use of any facility, equipment, or property provided with the aid of Federal financial assistance.

(h) The enumeration of specific forms of prohibited discrimination in paragraphs (b) through (g) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(i)(1) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, religion, national origin, or sex, the recipient must take affirmative action to overcome the effects of prior discrimination.

(2) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, religion, national origin, or sex.

(j) Nothing contained in this subpart shall be construed as requiring any recipient to adopt a percentage ratio, quota system, or other program to achieve racial balance. The use of goals and timetables is not use of a quota prohibited by this section.

[45 FR 28705, Apr. 30, 1980, as amended at 45 FR 54036, Aug. 14, 1980]

§ 42.204 Applicants' obligations.

(a) Every application for Federal financial assistance to which this subpart applies shall, as a condition of approval of such application and the extension of any Federal financial assistance pursuant to such application, contain or be accompanied by an assurance that the applicant will comply with all applicable nondiscrimination requirements and will obtain such assurances from its subgrantees, contractors, or subcontractors to which this subpart applies, as a condition of the extension of Federal financial assistance to them.

(b) Every unit of State or local government and every agency of such unit that applies for a grant of $500,000 or more under the JSIA or the Juvenile Justice Act, must submit a copy of its current Equal Employment Opportunity Program (if required to develop one under 28 CFR 42.301, et. seq.) to OJARS at the same time it submits its grant application. No application for $500,000 or more will be approved until OJARS has approved the applicant's EEOP.

(c) Every application for Federal financial assistance from a State or local unit of government or agency thereof shall contain an assurance that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing, on the ground of race, color, religion, national origin, or sex against the recipient State or local government unit, or agency, the recipient will forward a copy of the finding to the appropriate CJC and to OJARS.

[45 FR 28705, Apr. 30, 1980, as amended at 45 FR 54037, Aug. 14, 1980]

§ 42.205 Complaint investigation.

(a) The Office shall investigate complaints filed by or on behalf of an individual claiming to be aggrieved, that allege a violation of section 815(c)(1) of the JSIA, or this subpart.

(b) No complaint will be investigated if it is received more than one year after the date of the alleged discrimination, unless the time for filing is extended by the Director of OJARS for good cause shown.

(c) The Office shall conduct investigations of complaints as follows:

(1) Within 21 days of receipt of a complaint, the Office shall:

(i) Ascertain whether it had jurisdiction under paragraphs (a) and (b) of this section;

(ii) If jurisdiction is found, notify the recipient alleged to be discriminating of its receipt of the complaint; and

(iii) Initiate the investigation.

(2) The investigation will ordinarily be initiated by a letter requesting data pertinent to the complaint and advising the recipient of:

(i) The nature of the complaint, and, with the written consent of the complainant, the identity of the complainant;

(ii) The programs or activities affected by the complaint;

(iii) The opportunity to make, at any time prior to receipt of the Office's preliminary findings, a documentary submission, responding to, rebutting, or denying the allegations made in the complaint; and

(iv) The schedule under which the complaint will be investigated and a determination of compliance or non-compliance made.

Copies of this letter will also be sent to the chief executive of the appropriate unit(s) of government, and to the appropriate CJC.

(3) Within 150 days or, where an on-site investigation is required, within 175 days after the initiation of the investigation, the Office shall advise the complainant, the recipient, the chief executive(s) of the appropriate unit(s) of government, and the appropriate CJC of:

(i) Its investigative findings;

(ii) Where appropriate, its recommendations for compliance; and

(iii) If it is likely that satisfactory resolution of the complaint can be obtained, the recipient's opportunity to request the Office to engage in voluntary compliance negotiations prior to the Director of OJARS' determination of compliance or non-compliance.

(4) If, within 30 days, the Office's recommendations for compliance are not met, or voluntary compliance is not secured, the matter will be forwarded to the Director of OJARS for a determination of compliance or non-compliance. The determination shall be made no later than 14 days after the conclusion of the 30-day period. If the Director makes a determination of non-compliance with section 815(c)(1) of the JSIA, the Office shall institute administrative proceedings pursuant to § 42.208 et seq.

(5) If the complainant or another party, other than the Attorney General, has filed suit in Federal or State court alleging the same discrimination alleged in a complaint to OJARS, and, during OJARS' investigation, the trial of that suit would be in progress, OJARS will suspend its investigation and monitor the litigation through the court docket and, where necessary, contacts with the complainant. Upon receipt of notice that the court has made a finding of a pattern or practice of discrimination within the meaning of § 42.208, the Office will institute administrative proceedings pursuant to § 42.208, *et seq.* Upon receipt of notice that the court has made a finding affecting only the complainant, the Office will adopt the findings of the court as its investigative findings pursuant to § 42.205(c)(3).

(6) The time limits listed in paragraphs (c)(1) through (c)(5) of this section shall be appropriately adjusted where OJARS requests another Federal agency or another branch of the Department of Justice to act on the complaint. OJARS will monitor the progress of the matter through liaison with the other agency. Where the request to act does not result in timely resolution of the matter, OJARS will institute appropriate proceedings pursuant to this section.

[45 FR 28705, Apr. 30, 1980; 45 FR 54037, Aug. 14, 1980]

§ 42.206 Compliance reviews.

(a) The Office shall periodically conduct:

(1) Pre-award compliance reviews of all applicants requesting a grant from LEAA, NIJ, or BJS for $500,000 or more; and

(2) Post-award compliance reviews of selected recipients of LEAA, NIJ, or BJS assistance.

(b) *Pre-award reviews.* The Office shall review selected formula, discretionary, and national priority applications for $500,000 or more in order to determine whether the application presents a possibility of discrimination in the services to be performed under the grant, or in the employment practices of the applicant. In those instances where it finds such a possibility, the Office shall special condition, disapprove or take other action with respect to the application to assure that the project complies with section 815(c)(1) of the JSIA.

(c) *Post-award reviews.* The Office shall seek to review those recipients which appear to have the most serious equal employment opportunity problems, or the greatest disparity in the delivery of services to the minority and non-minority or male and female communities they serve. Selection for review shall be made on the basis of:

(1) The relative disparity between the percentage of minorities, or women, in the relevant labor market, and the percentage of minorities, or women, employed by the recipient;

(2) The percentage of women and minorities in the population receiving program benefits;

(3) The number and nature of discrimination complaints filed against a recipient with OJARS or other Federal agencies;

(4) The scope of the problems revealed by an investigation commenced on the basis of a complaint filed with the Office against a recipient or by a pre-award compliance review; and

(5) The amount of assistance provided to the recipient.

(d) Within 15 days after selection of a recipient for review, the Office shall inform the recipient that it has been selected and will initiate the review. The review will ordinarily be initiated by a letter requesting data pertinent to the review and advising the recipient of:

(1) The practices to be reviewed;

(2) The programs or activities affected by the review;

(3) The opportunity to make, at any time prior to receipt of the Office's investigative findings, a documentary submission responding to the Office, explaining, validating, or otherwise addressing the practices under review; and

(4) The schedule under which the review will be conducted and a determination of compliance or non-compliance made.

Copies of this letter will also be sent to the chief executive of the appropriate unit(s) of government, and to the appropriate CJC.

(e) Within 150 days or, where an on-site investigation is required, within 175 days after the initiation of the review, the Office shall advise the recipient, the chief executive(s) of the appropriate unit(s) of government, and the appropriate CJC, of:

(1) Its investigative findings;

(2) Where appropriate, its recommendations for compliance; and

(3) The opportunity to request the Office to engage in voluntary compliance negotiations prior to the Director of OJARS' determination of compliance or noncompliance.

(f) If, within 30 days, the Office's recommendations for compliance are not met, or voluntary compliance is not secured, the Director of OJARS shall make a determination of compliance or non-compliance. The determination shall be made no later than 14 days after the conclusion of the 30-day negotiation period. If the Director makes a determination of non-compliance with section 815(c) of the JSIA, the Office shall institute administrative proceedings pursuant to § 42.208, *et seq.*

[45 FR 28705, Apr. 30, 1980; 45 FR 54037, Aug. 14, 1980]

§ 42.207 Compliance information.

(a) Each recipient shall:

(1) Keep such records, and submit to OJARS such timely, complete, and accurate information as OJARS may request to determine whether the recipient is complying with Section 815(c)(1) of the JSIA; and

(2) Permit reasonable access by OJARS to its books, documents, papers, and records, to the extent necessary to determine whether the recipient is complying with Section 815(c)(1) of the JSIA.

(b) Failure to comply with § 42.207(a) shall subject the recipient to the sanctions provided in Section 803(a) of the JSIA, 42 U.S.C. 3783(a).

§ 42.208 Notice of noncompliance.

(a) Whenever the Office has:

(1) Received notice of a finding, after notice and opportunity for a hearing by:

(i) A Federal court (other than in an action brought by the Attorney General under Section 815(c)(3) of the JSIA);

(ii) A State court; or

(iii) A Federal or State administrative agency (other than the Office under paragraph (a)(2) of this section); to the effect that there has been a pattern or practice of discrimination in violation of Section 815(c)(1) of the JSIA; or

(2) Made a determination after an investigation by the Office pursuant

to § 42.205 or § 42.206 of this subpart that a State government or unit of general local government, or agency thereof, is not in compliance with this subpart, or Section 815(c)(1) of the JSIA, or this subpart: the Office shall, within 10 days after such occurrence, notify the chief executive of the affected State and, if the action involves a unit of general local government, the chief executive of such unit of general local government, that such program or activity has been so found or determined not to be in compliance with this subpart or section 815(c)(1) of the JSIA or this subpart, and shall request each chief executive notified under this section with respect to such violation to secure compliance.

(b) For the purposes of this section, notice means:

(1) Publication in—

(i) Employment Practices Decisions, Commerce Clearinghouse, Inc.;

(ii) Fair Employment Practices, Bureau of National Affairs, Inc.;

(iii) The United States Law Week, Bureau of National Affairs, Inc.; or

(iv) Federal Supplement, Federal Reporter, or Supreme Reporter, West Publishing Company; or

(2) Receipt by the Office of a reliable copy of a pattern or practice finding, made after a due process hearing from any source.

(c) When the Office receives notice of a finding which has been made more than 120 days prior to receipt, the Office will determine if the finding is currently applicable.

(1) In determining the current applicability of the finding, the Office will contact the clerk of the court and the office of the deciding judge (or the appropriate agency official) to determine whether any subsequent orders have been entered.

(2) If the information is unavailable through the clerk or the office of the judge (or the appropriate agency official), the Office will contact the attorneys of record for both the plaintiff and defendant to determine whether any subsequent orders have been entered, or if the recipient is in compliance.

(3) If, within 10 days of receipt of notice, it is not determined through the procedures set forth in paragraphs (c)(1) and (2) of this section, that the recipient is in full compliance with a final order of the court (or agency) within the meaning of § 42.211(b), the Office will notify the appropriate chief executive of the recipient's noncompliance as provided in § 42.208(a).

(d) For purposes of paragraph (a)(1)(iii) of this section a finding by a Federal or State administrative agency shall be deemed rendered after notice and opportunity for a hearing if it is rendered pursuant to procedures consistent with the provisions of subchapter II of Chapter 5, Title 5, United States Code (the Administrative Procedures Act).

(e) The procedures of a Federal or State administrative agency shall be deemed to be consistent with the Administrative Procedure Act (APA) if:

(1) The agency gives all interested parties opportunity for—

(i) The submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(ii) Hearing on notice, and a decision by an individual who did not participate in the investigation or prosecution of the matter.

(2) A party is entitled to be represented by counsel or other qualified representative, to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts; and

(3) The record shows the ruling on each finding, conclusion, or exception presented. All decisions, including initial recommended, and tentative decisions, shall be a part of the record and shall include a statement of—

(i) Findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(ii) The appropriate rule, order, sanction, relief, or definal thereof.

(f) If within 10 days of receipt of notice the Office cannot determine whether the finding was rendered pursuant to procedures consistent with the APA, it shall presume the APA procedures were applied, and send notification under § 42.208(a) to the appropriate chief executive(s).

(g) Each notification under § 42.208(a) shall advise the appropriate chief executive of:

(1) The program or activity determined to be in noncompliance;

(2) The general legal and factual basis for its determination;

(3) The Office's request to secure compliance;

(4) The action to be taken by the Office and the provisions of law under which the proposed action is to be taken should the chief executive fail to secure compliance; and

(5) The right of the recipient to request a preliminary hearing, pursuant to § 42.212, and a full hearing, pursuant to § 42.213.

§ 42.209 Compliance secured.

(a) In the event a chief executive secures compliance after notice pursuant to § 42.208, the terms and conditions with which the affected State government or unit of general local government agrees to comply shall be set forth in writing and signed by the chief executive of the State, by the chief executive of such unit (in the event of a violation by a unit of general local government), and by the Director of OJARS.

(b) Prior to the effective date of the agreement, the Office shall send a copy of the agreement to each complainant, if any, with respect to such violation, and to the appropriate CJC.

(c) The chief executive of the State, or the chief executive of the unit (in the event of a violation by a unit of general local government) shall file semi-annual reports with the Office detailing the steps taken to comply with the agreement.

(d) Within 15 days of receipt of such reports, the Office shall send a copy to each complainant, if any.

(e) The Director of OJARS shall also determine a recipient to be in compliance if it complies fully with the final order or judgement of a Federal or State court, pursuant to §§ 42.211(a)(2) and 42.211(b), or if found by such court to be in compliance with section 815(c)(1).

§ 42.210 Compliance not secured.

(a) If, at the conclusion of 90 days after notification of noncompliance with Section 815(c)(1):

(1) Compliance has not been secured by the chief executive of that State or the chief executive of that unit of general local government; and

(2) An administrative law judge has not made a determination under § 42.212 that it is likely the State government or unit of local government will prevail on the merits;

the Office shall notify the Attorney General that compliance has not been secured and shall cause to have suspended further payment of any funds under the JSIA or Juvenile Justice Act, as appropriate, to the specific program or activity in which the noncompliance has been found.

(b) If a hearing is requested pursuant to section 42.213, the suspension of funds shall be effective for a period of not more than 30 days after the conclusion of the hearing, or in the absence of a hearing under § 42.213, funds shall be suspended for not more than 120 days, unless there has been an express finding by the Director of OJARS after notice and opportunity for such a hearing, that the recipient is not in compliance with § 815(c)(1) of the JSIA, or this subpart.

§ 42.211 Resumption of suspended funds.

(a) Payment of suspended funds made available under the JSIA or the Juvenile Justice Act shall resume only if—

(1) Such State government or unit of general local government enters into a compliance agreement signed by the Director of OJARS in accordance with § 42.209;

(2) Such State government or unit of general local government:

(i) Complies fully with the final order or judgment of a Federal or State court, if that order or judgement covers all matters raised by the Director of OJARS in the notice pursuant to § 42.208, or

(ii) Is found to be in compliance with section 815(c)(1) of the JSIA by such court;

(3) After a hearing, the Director of OJARS, pursuant to § 42.213, finds

that noncompliance has not been demonstrated; or

(4) An administrative law judge has determined, under § 42.212, that it is likely that the State government or unit of local government will prevail on the merits.

(b) Full compliance with a court order, for the purposes of paragraph (2) of this section, includes the securing of an agreement to comply over a period of time, particularly in complex cases or where compliance would require an extended period of time for implementation.

§ 42.212 Preliminary hearing.

(a) Prior to the suspension of funds under § 42.210(a), but within the 90-day period after notification under § 42.208, the State government or unit of local government may request an expedited preliminary hearing on the record in accordance with 5 U.S.C. 554 in order to determine whether it is likely that the State government or unit of local government would, at a full hearing under § 42.213, prevail on the merits on the issue of the alleged noncompliance.

(b) The preliminary hearing shall be initiated within 30 days of request. The ALJ shall make his finding within 15 days after the conclusion of the preliminary hearing.

§ 42.213 Full hearing.

(a) At any time after notification of noncompliance under § 42.208, but before the conclusion of the 120-day suspension period referred to in § 42.210, a State government or unit of general local government may request a hearing on the record in accordance with 5 U.S.C. 554 in order to contest the findings of determination of noncompliance made under § 42.208. The Office shall initiate the hearing within 60 days of request.

(b) Within 30 days after the conclusion of the hearing, or, in the absence of a hearing, at the conclusion of the 120-day period referred to in § 42.210, the Director of OJARS shall make a finding of compliance or noncompliance.

(1) If the Director makes a finding of noncompliance, the Director shall:

(i) Notify the Attorney General in order that the Attorney General may institute a civil action under section 815(c)(3) of the JSIA;

(ii) Cause to have terminated the payment of funds under the JSIA and/or the Juvenile Justice Act; and

(iii) If appropriate, seek repayment of funds.

(2) If the Director makes a finding of compliance, payment of the suspended funds and reconsideration of applications shall resume.

§ 42.214 Judicial review.

Any State government or unit of general local government aggrieved by a final determination of the Office under § 42.213 may appeal such determination as provided in Section 805 of the JSIA.

§ 42.215 Other actions authorized under the JSIA.

(a) The Director of OJARS may, at any time, request the Attorney General to file suit to enforce compliance with section 815(c)(1). OJARS will monitor the litigation through the court docket and liaison with the Civil Rights Division of the Department of Justice. Where the litigation does not result in timely resolution of the matter, and funds have not been suspended pursuant to § 42.215(b), OJARS will institute administrative proceedings unless enjoined from doing so by the court.

(b)(1) Whenever the Attorney General files a civil action alleging a pattern or practice of discriminatory conduct on the basis of race, color, religion, national origin, or sex in any program or activity of a State government or unit of local government which State government or unit of local government receives funds made available under the JSIA or the Juvenile Justice Act and the conduct allegedly violates or would violate the provisions of this subpart or section 815(c)(1) of the JSIA and neither party within 45 days after such filing has been granted such preliminary relief with regard to the suspension or payment of funds as may otherwise be available by law, the Director of OJARS shall suspend further payment of any funds under the

JSIA and the Juvenile Justice Act to that specific program or activity alleged by the Attorney General to be in violation of the provisions of section 815(c)(1) of the JSIA until such time as the court orders resumption of payment.

(2) The Office expects that preliminary relief authorized by this subsection will not be granted unless the party making application for such relief meets the standards for a preliminary injunction.

(c)(1) Whenever a State government or unit of local government or any officer or employee thereof acting in an official capacity, has engaged or is engaging in any act or practice prohibited by section 815(c)(1) of the JSIA, a civil action may be instituted after exhaustion of administrative remedies by the person aggrieved in an appropriate United States District Court or in a State court or general jurisdiction.

(2) Administrative remedies shall be deemed to be exhausted upon the expiration of 60 days after the date the administrative complaint was filed with the Office or any other administrative enforcement agency, unless within such period there has been a determination by the Office or the agency on the merits of the complaint, in which case such remedies shall be deemed exhausted at the time the determination becomes final.

(3) The Attorney General, or a specifically designated assistant for or in the name of the United States may intervene upon timely application in any civil action brought to enforce compliance with Section 815(c)(1) of the JSIA if he certifies that the action is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

APPENDIX A TO SUBPART D—COMMENTARY

Section 42.201(c). The compliance enforcement mechanism of section 815(c)(2) applies by its terms to State and local government. The prohibitions in section 815(c)(1), however, apply to all recipients of OJARS assistance. Accordingly, where a private entity which has received LEAA, NIJ, or BJS assistance through a State or local unit of government is determined by OJARS to be in non-compliance, OJARS will invoke the section 815(c)(2) mechanism against the appropriate unit of government for its failure to enforce the assurances of compliance given it by the private recipient, unless the unit has initiated its own compliance action against the private recipient. The fund termination procedures of section 803(a) will be invoked against non-complying private recipients which receive assistance directly from LEAA, NIJ, or BJS, or through another private entity.

Section 42.202(g). Section 815(c)(1) of the JSIA limits suspension and termination of assistance in the event of noncompliance to the "programs or activity" in which the noncompliance is found. The phrase "program or activity" was first used in section 815(c)(1) of the Crime Control Act of 1976, the substantially identical predecessor to section 815(c)(1).

House Report No. 94-1155 (94th Congress, 2d Session), at p. 26, explained the provision as follows:

> "Suspension may be limited to the specific program or activity found to have discriminated, rather than all of the recipients' LEAA funds.
>
> "For example, if discriminatory employment practices in a city's police department were cited in the notification, LEAA may only suspend that part of the city's payments which fund the police department. LEAA may not suspend the city's LEAA funds which are used in the city courts, prisons, or juvenile justice agencies."

This passage makes it clear that OJARS need not demonstrate a nexus between the particular project funded and the discriminatory activity. See *Lau v. Nichols,* 414 U.S. 563, 566 (1974).

Sections 42.203(b) and 42.203(e-i). These provisions are derived from 28 CFR 42.104(b) of Subpart C of the Department of Justice Nondiscrimination Regulations. Where appropriate "sex" and "religion" have been added as prohibited grounds of discrimination, and "denial of employment" as another activity within the scope of section 815(c)(1).

Individual projects benefiting a particular sex, race, or ethnic group are not violative of section 815(c)(1) unless the granting agency or the recipient has engaged in a pattern of granting preferential treatment to one such group, and cannot justify the preference on the basis of a compelling governmental interest, in the case of racial or ethnic discrimination, or a substantial relationship to an important governmental function, in the case of sex discrimination.

Section 42.203(b)(10). On August 25, 1978, the Department of Justice, the Equal Employment Opportunity Commission, the Department of Labor and the then-Civil Service Commission published the Uniform Employee Selection Guidelines codified at 28 CFR 50.14. Since OJARS is a component of the Department, these guidelines are applicable to the selection procedures of LEAA, NIJ, and BJS recipients. See 44 FR 11996 (March 2, 1979) for a detailed commentary on the guidelines.

Section 42.203(c). In the Conference Report on Section 518(c) of the Crime Control Act (the substantially identical predecessor of Section 815(c)), the managers stated that "In the area of employment cases brought under this section, it is intended by the conferees that the standards of Title VII of the Civil Rights Act of 1964 apply." H. Rept. No. 94-1723 (94th Cong., 2d Sess.) at p. 32.

This section makes the OJARS standards of employment discrimination consistent with those used by the Civil Rights Division of the Department of Justice. It further clarifies that the burden shifts to the employer to validate its selection procedures once OJARS has demonstrated that those procedures disproportionately exclude an affected class. Discriminatory purpose on the part of the employer, which must be shown before the burden shifts in a Fourteenth Amendment case such as *Washington* v. *Davis,* 426 U.S. 229, 96 S. Ct. 2040 (1976), need not be shown in an employment discrimination case brought under section 815(c)(1).

Section 42.203(j). Section 815(b) of the JSIA reads:

"Notwithstanding any other provision of law, nothing contained in this title shall be construed to authorize the National Institute of Justice, the Bureau of Justice Statistics, or the Law Enforcement Assistance Administration (1) to require, or condition the availability or amount of a grant upon the adoption by an applicant or grantee under this title of a percentage ratio, quota system, or other program to achieve racial balance in any criminal justice agency; or (2) to deny or discontinue a grant because of the refusal of an applicant or grantee under this title to adopt such a ratio, system, or other program."

In commenting on the Crime Control Act of 1976, Senator Roman Hruska of Nebraska explained the difference between quotas and goals and timetables as follows:

"Section 518(b) [now 815(b)] of the act prohibits the setting of quotas. This provision was unchanged, and this provision will still bind the Administration.

"LEAA does have an affirmative obligation under this law to seek to eliminate discriminatory practices, voluntarily, if possible, prior to resorting to fund termination. LEAA can request that a recipient eliminate the effect of past discrimination by requiring the recipient to commit itself to goals and timetables. The formulation of goals is not a quota prohibited by section 518(b) of the act. A goal is a numerical objective fixed realistically in terms of the number of vacancies expected and the number of qualified applicants available. Factors such as a lower attrition rate than expected, bona fide fiscal restraints, or a lack of qualified applicants would be acceptable reasons for not meeting a goal that has been established and no sanctions would accrue under the program." Cong. Rec. S 17320 (September 30, 1976, daily ed.).

The Senate Judiciary Committee Report on the JSIA also emphasized that section 815(b) does not "undercut subsection (c) in any way; subsection (b) has been interpreted so as not to limit LEAA's anti-discrimination enforcement capabilities. Indeed, recent court decisions have made this abundantly clear. See, e.g., *United States* v. *City of Los Angeles,* No. 77-3460 (C.D. Cal. 2/1/79)." S. Rept. 96-142, p. 57.

See also the Equal Employment Opportunity Commission Affirmative Action Guidelines, 44 FR 4422 (January 19, 1979).

Section 42.204. All grantees and subgrantees must make the assurances found in paragraph (a). Only State and local units of government and agencies thereof must make the assurance found in paragraph (c), since, as explained in the commentary on § 42.201(c), the enforcement provisions of section 815(c)(2) apply only to governmental recipients.

Section 42.205(a). Where information available to the Office clearly and convincingly demonstrates that the complaint is frivolous or otherwise without merit, the complaint will not be investigated, and the complainant will be so advised.

Section 42.205(b). A one-year timeliness requirement is imposed to ensure that OJARS will be devoting its resources to the resolution of active issues, and to maximize the possibility that necessary witnesses and evidence are still available.

Examples of good cause which would clearly warrant an extension of the filing period are a statement from the complainant stating that he or she was unware of the discrimination until after a year had passed, or that he or she was not aware that a remedy was available through OJARS.

Section 42.205(c)(1). Jurisdiction exists if the complaint alleges discrimination on a ground prohibited by section 815(c)(1), if the recipient was receiving funds at the time of the discrimination, and the respondent named in the complaint is a current recipient of LEAA, NIJ, or BJS assistance.

Prior to a determination of noncompliance, OJARS will attempt to negotiate voluntary compliance only during the 30-day period following receipt of the Office's preliminary findings, and only at the request of the recipient, as provided in § 42.205(c)(3). If a determination of noncompliance is made, OJARS will participate in voluntary compliance efforts during the 90-day period following the letter sent to the chief executive(s) under section 42.208.

Sections 42.205(c) (3) and (4) and 42.206(e). OJARS will notify the appropriate chief executive(s) of its recommendations during the voluntary resolution phase of both the complaint investigation and compliance review process. OJARS expects that the early involvement of the chief executive will often expedite the resolution of issues.

Section 42.205(c)(5). OJARS will initiate an investigation if the litigation discussed in this subparagraph becomes protracted or apparently will not resolve the matter within a reasonable time.

Section 42.205(c)(6). In order to effectively utilize the resources of other agencies, and to avoid duplication of effort, OJARS may request another agency to act on a particular complaint. OJARS expects this practice to be limited, and will attempt to ensure that any cooperative agreement reached with another agency is consistent with the timetables set forth in § 42.205(c).

Section 42.206(a). OJARS recognizes the practical impossibility of reviewing the compliance of each of its more than 39,000 recipients. The regulations seek to expedite the review process by reducing its length and narrowing its focus. Compliance reviews may, in some instances, be limited to specific employment practices, or other functions of a recipient, that appear to have the greatest adverse impact on an affected class.

Section 42.206(b). The factors listed will be considered cumulatively by OJARS in selecting recipients for reviews. OJARS will consider data from all sources, including information provided by both internal and external auditors.

Section 42.208(b). Upon receipt of the publications listed, OJARS will review the case reports for findings that may be violations of section 815(c)(1). In the case of the West Publishing Company reporters, OJARS will consult the topic "Civil Rights" in the Key Number Digests contained in the advance sheets.

Section 42.208(e). This subsection sets forth the minimum procedural safeguards that OJARS would require of an administrative hearing to assure the process was consistent with the Administrative Procedure Act. The sufficiency of other procedures that may vary in form but insure due process and the same opportunity for a fair hearing of both parties' evidence will be determined by OJARS on a case-by-case basis.

The Office will compile a list of State agencies whose procedures have been found consistent with the Administrative Procedure Act, and a list of State agencies whose procedures have been found inconsistent. When a finding of an agency not on either list is received, the Office will attempt to reliably determine the procedures used to render the findings.

Section 42.209(a). Although the signature of the appropriate chief executives are ultimately required on the compliance agreement, these regulations do not preclude them from delegating the responsibility for securing compliance during the 90-day period following notification, to State or local administrative or human rights agencies under their respective authority. A compliance agreement may be an agreement to comply over a period of time, particularly in complex cases or where compliance would require an extended period of time for implementation.

Section 42.209(b). The regulations require that a copy of the proposed compliance agreement be sent to the complainant, if any, before the effective date of the agreement. Although the Act would permit a copy to be sent as late as the effective date, OJARS believes the compliance agreement would be more likely to resolve all concerns and discourage litigation if the complainant's views were considered before it took effect.

Section 42.211(b). An example of a case where compliance would require an extended period of time for implementation would be a court order setting a goal of five years for an employer to raise the percentage of minorities in its workforce to parity with the percentage of minorities in the relevant geographical labor force.

Section 42.213. The full hearing will be conducted in accordance with JSIA Hearing and Appeal Procedures, 28 CFR 18.1, *et seq.*

Section 42.215(a). In a December 20, 1976 letter to the Administrator of LEAA, Congressman Peter Rodino, Chairman of the House Judiciary Committee, commented on the regulations proposed to implement the substantially identical nondiscrimination provisions of the Crime Control Act. He advised the Administrator that "the committee intentionally omitted the word 'refer' from the law to ensure that LEAA would always retain administrative jurisdiction over a complaint filed with them. It is not appropriate for LEAA to refer cases to the Civil Rights Division or other Federal or State agencies without monitoring the case for prompt resolution."

Section 42.215(c)(2). The exhaustion of administrative remedies at the end of 60 days (unless the Office has made a determination) does not limit OJARS' authority to investigate a complaint after the expiration of that period. OJARS will continue to investigate the complaint after the end of the 60-day period, if necessary, in accordance with the provisions of § 42.205.

Subpart E—Equal Employment Opportunity Program Guidelines

AUTHORITY: Sec. 501 of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351, 82 Stat. 197, as amended.

SOURCE: 43 FR 28802, June 30, 1978, unless otherwise noted.

§ 42.301 Purpose.

The experience of the Law Enforcement Assistance Administration in implementing its responsibilities under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Pub. L. 90-351, 82 Stat. 197; Pub. L. 91-644, 84 Stat. 1881) has demonstrated that the full and equal participation of women and minority individuals in employment opportunities in the criminal justice system is a necessary component to the Safe Streets Act's program to reduce crime and delinquency in the United States.

§ 42.302 Application.

(a) "Recipient" means any State or local unit of government or agency thereof, and any private entity, institution, or organization, to which Federal financial assistance is extended directly, or through such government or agency, but such term does not include any ultimate beneficiary of such assistance.

(b) The obligation of a recipient to formulate, implement, and maintain an equal employment opportunity program, in accordance with this subpart, extends to State and local police agencies, correctional agencies, criminal court systems, probation and parole agencies, and similar agencies responsible for the reduction and control of crime and delinquency.

(c) Assignments of compliance responsibility for Title VI of the Civil Rights Act of 1964 have been made by the Department of Justice to the Department of Health and Human Services, covering educational institutions and general hospital or medical facilities. Similarly, the Department of Labor, in pursuance of its authority under Executive Orders 11246 and 11375, has assigned responsibility for monitoring equal employment opportunity under government contracts with medical and educational institutions, and non-profit organizations, to the Department of Health and Human Services. Accordingly, monitoring responsibility in compliance matters in agencies of the kind mentioned in this paragraph rests with the Department of Health and Human Services, and agencies of this kind are exempt from the provisions of this subpart, and are not responsible for the development of equal employment opportunity programs in accordance herewith.

(d) Each recipient of LEAA assistance within the criminal justice system which has 50 or more employees and which has received grants or subgrants of $25,000 or more pursuant to and since the enactment of the Safe Streets Act of 1968, as amended, and which has a service population with a minority representation of 3 percent or more, is required to formulate, implement and maintain an equal employment opportunity program relating to employment practices affecting minority persons and women within 120 days after either the promulgation of these amended guidelines, or the initial application for assistance is approved, whichever is sooner. Where a recipient has 50 or more employees, and has received grants or subgrants of $25,000 or more, and has a service population with a minority representation of less than 3 percent, such recipient is required to formulate, implement, and maintain an equal employment opportunity program relating to employment practices affecting women. For a definition of "employment practices" within the meaning of this paragraph, see § 42.202(c).

(e) "Minority persons" shall include persons who are Black, not of Hispanic origin; Asian or Pacific Islanders; American Indians or Alaskan Native; or Hispanics. These categories are defined at 28 CFR 42.402(e).

(f) "Fiscal year" means the 12 calendar months beginning October 1, and ending September 30, of the following calendar year. A fiscal year is designated by the calendar year in which it ends.

[43 FR 28802, June 30, 1978, as amended by Order No. 960-81, 46 FR 52357, Oct. 27, 1981]

§ 42.303 Evaluation of employment opportunities.

(a) A necessary prerequisite to the development and implementation of a satisfactory equal employment opportunity program is the identification and analysis of any problem areas inherent in the utilization or participation of minorities and women in all of the recipient's employment phases (e.g., recruitment, selection, and promotion) and the evaluation of employment opportunities for minorities and women.

(b) In many cases an effective equal employment opportunity program may only be accomplished where the program is coordinated by the recipient agency with the cognizant Office of Personnel Management or similar agency responsible by law, in whole or in part, for the recruitment and selection of entrance candidates and selection of candidates for promotion.

(c) In making the evaluation of employment opportunities, the recipient shall conduct such analysis separately for minorities and women. However, all racial and ethnic data collected to perform an evaluation pursuant to the requirements of this section should be cross classified by sex to ascertain the extent to which minority women or minority men may be underutilized. The evaluation should include but not necessarily be limited to, the following factors:

(1) An analysis of present representation of women and minority persons in all job categories;

(2) An analysis of all recruitment and employment selection procedures for the preceding fiscal year, including such things as position descriptions, application forms, recruitment methods and sources, interview procedures, test administration and test validity, educational prerequisites, referral procedures and final selection methods, to insure that equal employment opportunity is being afforded in all job categories;

(3) An analysis of seniority practices and provisions, upgrading and promotion procedures, transfer procedures (lateral or vertical), and formal and informal training programs during the preceding fiscal year, in order to insure that equal employment opportunity is being afforded;

(4) A reasonable assessment to determine whether minority employment is inhibited by external factors such as the lack of access to suitable housing in the geographical area served by a certain facility or the lack of suitable transportation (public or private) to the workplace.

[43 FR 28802, June 30, 1978, as amended by Order No. 899-80, 45 FR 43703, June 30, 1980]

§ 42.304 Written equal employment opportunity program.

Each recipient's equal employment opportunity program shall be in writing and shall include:

(a) A job classification table or chart which clearly indicates for each job classification or assignment the number of employees within each respective job category classified by race, sex and national origin (include for example Hispanic, Asian or Pacific Islander, and American Indian or Alaskan Native). Also, principal duties and rates of pay should be clearly indicated for each job classification. Where auxiliary duties are assigned or more than one rate of pay applies because of length of time in the job or other factors, a special notation should be made. Where the recipient operates more than one shift or assigns employees within each shift to varying locations, as in law enforcement agencies, the number by race, sex and national origin on each shift and in each location should be identified. When relevant, the recipient should indicate the racial/ethnic mix of the geographic area of assignments by the inclusion of minority population and percentage statistics.

(b) The number of disciplinary actions taken against employees by race, sex and national origin within the preceding fiscal year, the number and types of sanctions imposed (suspension indefinitely, suspension for a term, loss of pay, written reprimand, oral reprimand, other) against individuals by race, sex and national origin.

(c) The number of individuals by race, sex and national origin (if available) applying for employment within the preceding fiscal year and the number by race, sex and national origin (if available) of those applicants who were offered employment and those who were actually hired. If such data is unavailable, the recipient should institute a system for the collection of such data.

(d) The number of employees in each job category by race, sex and national origin who made application for promotion or transfer within the preceding fiscal year and the number in each job category by race, sex, and national origin who were promoted or transferred.

(e) The number of employees by race, sex, and national origin who were terminated within the preceding fiscal year, identifying by race, sex, and national origin which were voluntary and involuntary terminations.

(f) Available community and area labor characteristics within the relevant geographical area including total population, workforce and existing unemployment by race, sex and national origin. Such data may be obtained from the Bureau of Labor Statistics, Washington, D.C., State and local employment services, or other reliable sources. Recipient should identify the sources of the data used.

(g) A detailed narrative statement setting forth the recipient's existing employment policies and practices as defined in § 42.202(c). Thus, for example, where testing is used in the employment selection process, it is not sufficient for the recipient to simply note the fact. The recipient should identify the test, describe the procedures followed in administering and scoring the test, state what weight is given to test scores, how a cut-off score is established and whether the test has been validated to predict or measure job performance and, if so, a detailed description of the validation study. Similarly detailed responses are required with respect to other employment policies, procedures, and practices used by the applicant.

(1) The statement should include the recipient's detailed analysis of existing employment policies, procedures, and practices as they relate to employment of minorities and women (see § 42.303) and, where improvements are necessary, the statement should set forth in detail the specific steps the recipient will take for the achievement of full and equal employment opportunity. The Department of Justice Guidelines on Employee Selection Procedures, 28 CFR Part 50, set out the appropriate standards for nondiscriminatory selection procedures. Recipients of LEAA assistance using selection procedures which are not in conformity with the Department of Justice guidelines shall set forth the specific areas of nonconformity, the reasons which may explain any such nonconformity, and if necessary, the steps the recipient agency will take to correct any existing deficiency.

(2) The recipient should also set forth a program for recruitment of minority persons based on an informed judgment of what is necessary to attract minority applications including, but not necessarily limited to, dissemination of posters, use of advertising media patronized by minorities, minority group contacts and community relations programs. As appropriate, recipients may wish to refer to recruitment techniques suggested in revised order No. 4 of the Office of Federal Contract Compliance, U.S. Department of Labor, found at 41 CFR 60-2.24(e).

(h) Plan for dissemination of the applicant's Equal Employment Opportunity Program to all personnel, applicants and the general public. As appropriate, recipients may wish to refer to the recommendations for dissemination of policy suggested in revised order No. 4 of the Office of Federal Contract Compliance, U.S. Department of Labor, found at 41 CFR 60-2.21.

(i) Designation of specified personnel to implement and maintain adherence to the equal employment opportunity program and a description of their specific responsibilities suggested in revised order No. 4 of the Office of Federal Contract Compliance, U.S. Department of Labor, found at 41 CFR 60-2.22.

§ 42.305 Recordkeeping and certification.

The equal employment opportunity program and all records used in its preparation shall be kept on file and retained by each recipient covered by these guidelines for subsequent audit or review by responsible personnel of the cognizant State planning agency or the LEAA. Prior to the authorization to fund new or continuing programs under the Omnibus Crime Control and Safe Streets Act of 1968, the recipient shall file a certificate with the cognizant State planning agency or with the LEAA Office of Civil Rights Compliance stating that the equal employment opportunity program is on file with the recipient. This form of the certification shall be as follows:

> I, ——— (person filing the application) certify that the ——— (criminal justice agency) has formulated an equal employment program in accordance with 28 CFR 42.301, et seq., subpart E, and that it is on file in the Office of ——— (name), ——— (address), ——— (title), for review or audit by officials of the cognizant State planning agency or the Law Enforcement Assistance Administration as required by relevant laws and regulations.

The criminal justice agency created by the Governor to implement the Safe Streets Act within each State shall certify that it requires, as a condition of the receipt of block grant funds, that recipients from it have executed an Equal Employment Opportunity Program in accordance with this subpart, or that, in conformity with the terms and conditions of this regulation no equal employment opportunity programs are required to be filed by that jurisdiction.

§ 42.306 Guidelines.

(a) Recipient agencies are expected to conduct a continuing program of self-evaluation to ascertain whether any of their recruitment, employee selection or promotional policies (or lack thereof) directly or indirectly have the effect of denying equal employment opportunities to minority individuals and women.

(b) Equal employment program modification may be suggested by LEAA whenever identifiable referral or selection procedures and policies suggest to LEAA the appropriateness of improved selection procedures and policies. Accordingly, any recipient agencies falling within this category are encouraged to develop recruitment, hiring or promotional guidelines under their equal employment opportunity program which will correct, in a timely manner, any identifiable employment impediments which may have contributed to the existing disparities.

§ 42.307 Obligations of recipients.

The obligation of those recipients subject to these guidelines for the maintenance of an equal employment opportunity program shall continue for the period during which the LEAA assistance is extended to a recipient or for the period during which a comprehensive law enforcement plan filed pursuant to the Safe Streets Act is in effect within the State, whichever is longer, unless the assurances of compliance, filed by a recipient in accordance with § 42.204(a)(2), specify a different period.

§ 42.308 Noncompliance.

Failure to implement and maintain an equal employment opportunity program as required by these guidelines shall subject recipients of LEAA assistance to the sanctions prescribed by the Safe Streets Act and the equal employment opportunity regulations of the Department of Justice. (See 42 U.S.C. 3757 and 28 CFR 42.207.)

Subpart F—Coordination of Enforcement of Non-discrimination in Federally Assisted Programs

AUTHORITY: Executive Order 12250.

SOURCE: Order No. 670-76, 41 FR 52669, Dec. 1, 1976, unless otherwise noted.

§ 42.401 Purpose and application.

The purpose of this subpart is to insure that federal agencies which extend financial assistance properly enforce Title VI of the Civil Rights Act of 1964 and similar provisions in federal grant statutes. Enforcement of the latter statutes is covered by this subpart to the extent that they relate to prohibiting discrimination on the ground of race, color or national origin in programs receiving federal financial assistance of the type subject to Title

VI. Responsibility for enforcing Title VI rests with the federal agencies which extend financial assistance. In accord with the authority granted the Attorney General under Executive Order 12250, this subpart shall govern the respective obligations of federal agencies regarding enforcement of Title VI. This subpart is to be used in conjunction with the 1965 Attorney General Guidelines for Enforcement of Title VI, 28 CFR 50.3.

[Order No. 670-76, 41 FR 52669, Dec. 1, 1976, as amended by Order No. 960-81, 46 FR 52357, Oct. 27, 1981]

§ 42.402 Definitions.

For purpose of this subpart:

(a) "Title VI" refers to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-4. Where appropriate, this term also refers to the civil rights provisions of other federal statutes to the extent that they prohibit discrimination on the ground of race, color or national origin in programs receiving federal financial assistance of the type subject to Title VI itself.

(b) "Agency" or "federal agency" refers to any federal department or agency which extends federal financial assistance of the type subject to Title VI.

(c) "Program" refers to programs and activities receiving federal financial assistance of the type subject to Title VI.

(d) "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

(e) Where designation of persons by race, color or national origin is required, the following designations shall be used:

(1) *Black, not of Hispanic Origin.* A person having origins in any of the black racial groups of Africa.

(2) *Hispanic.* A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race.

(3) *Asian or Pacific Islander.* A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

(4) *American Indian or Alaskan Native.* A person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

(5) *White, not of Hispanic Origin.* A person having origins in any of the original people of Europe, North Africa, or the Middle East. Additional sub-categories based on national origin or primary language spoken may be used where appropriate, on either a national or a regional basis. Paragraphs (e)(1) through (e)(5) of this section, inclusive, set forth in this section are in conformity with the OMB Ad Hoc Committee on Race/Ethnic Categories' recommendations. To the extent that said designations are modified by the OMB Ad Hoc Committee, paragraphs (e)(1) through (e)(5) of this section, inclusive, set forth in this section shall be interpreted to conform with those modifications.

(f) "Covered employment" means employment practices covered by Title VI. Such practices are those which: (1) Exist in a program where a primary objective of the federal financial assistance is to provide employment, or (2) cause discrimination on the basis of race, color or national origin with respect to beneficiaries or potential beneficiaries of the assisted program.

§ 42.403 Agency regulations.

(a) Any federal agency subject to Title VI which has not issued a regulation implementing Title VI shall do so as promptly as possible and, no later than the effective date of this subpart, shall submit a proposed regulation to the Assistant Attorney General pursuant to paragraph (c) of this section.

(b) Any federal agency which becomes subject to Title VI after the effective date of this subpart shall, within 60 days of the date it becomes subject to Title VI, submit a proposed regulation to the Assistant Attorney General pursuant to paragraph (c) of this section.

(c) Regarding issuance or amendment of its regulation implementing

Title VI, a federal agency shall take the following steps:

(1) Before publishing a proposed regulation of amendment in the FEDERAL REGISTER, submit it to the Assistant Attorney General, Civil Rights Division;

(2) After receiving the approval of the Assistant Attorney General, publish the proposed regulation or amendment in the FEDERAL REGISTER for comment;

(3) After final agency approval, submit the regulation or amendment, through the Assistant Attorney General, to the Attorney General for final approval. (Executive Order 12250 delegates to the Attorney General the function, vested in the President by section 602 of Title VI, 42 U.S.C. 2000d-1, of approving Title VI regulations and amendments to them.)

(d) The Title VI regulation of each federal agency shall be supplemented with an appendix listing the types of federal financial assistance, i.e., the statutes authorizing such assistance, to which the regulation applies. Each such appendix shall be kept up-to-date by amendments published, at appropriate intervals, in the FEDERAL REGISTER. In issuing or amending such an appendix, the agency need not follow the procedure set forth in paragraph (c) of this section.

[Order No. 670-76, 41 FR 52669, Dec. 1, 1976, as amended by Order No. 960-81, 46 FR 52357, Oct. 27, 1981]

§ 42.404 Guidelines.

(a) Federal agencies shall publish Title VI guidelines for each type of program to which they extend financial assistance, where such guidelines would be appropriate to provide detailed information on the requirements of Title VI. Such guidelines shall be published within three months of the effective date of this subpart or of the effective date of any subsequent statute authorizing federal financial assistance to a new type of program. The guidelines shall describe the nature of Title VI coverage, methods of enforcement, examples of prohibited practices in the context of the particular type of program, required or suggested remedial action, and the nature of requirements relating to covered employment, data collection, complaints and public information.

(b) Where a federal agency determines that Title VI guidelines are not appropriate for any type of program to which it provides financial assistance, the reasons for the determination shall be stated in writing and made available to the public upon request.

§ 42.405 Public dissemination of Title VI information.

(a) Federal agencies shall make available and, where appropriate, distribute their Title VI regulations and guidelines for use by federal employees, applicants for federal assistance, recipients, beneficiaries and other interested persons.

(b) State agency compliance programs (see § 42.410) shall be made available to the public.

(c) Federal agencies shall require recipients, where feasible, to display prominently in reasonable numbers and places posters which state that the recipients operate programs subject to the nondiscrimination requirements of Title VI, summarize those requirements, note the availability of Title VI information from recipients and the federal agencies, and explain briefly the procedures for filing complaints. Federal agencies and recipients shall also include information on Title VI requirements, complaint procedures and the rights of beneficiaries in handbooks, manuals, pamphlets and other material which are ordinarily distributed to the public to describe the federally assisted programs and the requirements for participation by recipients and beneficiairies. To the extent that recipients are required by law or regulation to publish or broadcast program information in the news media, federal agencies and recipients shall insure that such publications and broadcasts state that the program in question is an equal opportunity program or otherwise indicate that discrimination in the program is prohibited by federal law.

(d) (1) Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program (e.g., affected by relocation) needs service or information in a language other than English in order effectively to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public.

(2) Federal agencies shall also take reasonable steps to provide, in languages other than English, information regarding programs subject to Title VI.

§ 42.406 Data and information collection.

(a) Except as determined to be inappropriate in accordance with paragraph (f) of this section or § 42.404(b), federal agencies, as a part of the guidelines required by § 42.404, shall in regard to each assisted program provide for the collection of data and information from applicants for and recipients of federal assistance sufficient to permit effective enforcement of Title VI.

(b) Pursuant to paragraph (a) of this section, in conjunction with new applications for federal assistance (see 28 CFR 50.3(c) II A) and in any applications for approval of specific projects or significant changes in applications for continuation or renewal of assistance (see 28 CFR 50.3(c) II B), and at other times as appropriate, federal agencies shall require applicants and recipients to provide relevant and current Title VI information. Examples of data and information which, to the extent necessary and appropriate for determining compliance with Title VI, should be required by agency guidelines are as follows:

(1) The manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination;

(2) The population eligible to be served by race, color and national origin;

(3) Data regarding covered employment, including use or planned use of bilingual public-contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English;

(4) The location of existing or proposed facilities connected with the program, and related information adequate for determing whether the location has or will have the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination;

(5) The present or proposed membership, by race, color and national origin, in any planning or advisory body which is an integral part of the program;

(6) Where relocation is involved, the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color or national origin

(c) Where additional data, such as demographic maps, the racial composition of affected neighborhoods or census data, is necessary or appropriate, for understanding information required in paragraph (b) of this section, federal agencies shall specify, in their guidelines or in other directives, the need to submit such data. Such additional data should be required, however, only to the extent that it is readily available or can be compiled with reasonable effort.

(d) Pursuant to paragraphs (a) and (b) of this section, in all cases, federal agencies shall require:

(1) That each applicant or recipient promptly notify the agency upon its request of any lawsuit filed against the applicant or recipient alleging discrimination on the basis of race, color or national origin, and that each recipient notify the agency upon its request of any complaints filed against the recipient alleging such discrimination;

(2) A brief description of any applicant's or recipient's pending applications to other federal agencies for assistance, and of federal asssistance being provided at the time of the application or requested report;

(3) A statement by any applicant describing any civil rights compliance reviews regarding the applicant conducted during the two-year period before

the application, and information concerning the agency or organization performing the review; and periodic statements by any recipient regarding such reviews;

(4) A written assurance by any applicant or recipient that it will compile and maintain records required, pursuant to paragraphs (a) and (b) of this section, by the agency's guidelines or other directives.

(e) Federal agencies should inquire whether any agency listed by the applicant or recipient pursuant to paragraph (d)(2) of this section has found the applicant or recipient to be in noncompliance with any relevant civil rights requirement.

(f) Where a federal agency determines that any of the requirements of this section are inapplicable or inappropriate in regard to any program, the basis for this conclusion shall be set forth in writing and made available to the public upon request.

§ 42.407 Procedures to determine compliance.

(a) *Agency staff determination responsibility.* All federal agency staff determinations of Title VI compliance shall be made by, or be subject to the review of, the agency's civil rights office. Where federal agency responsibility for approving applications or specific projects has been assigned to regional or area offices, the agency shall include personnel having Title VI review responsibility on the staffs of such offices and such personnel shall perform the functions described in paragraphs (b) and (c) of this section.

(b) *Application review.* Prior to approval of federal financial assistance, the federal agency shall make written determination as to whether the applicant is in compliance with Title VI (see 28 CFR 50.3(c) II A). The basis for such a determination under "the agency's own investigation" provision (see 28 CFR 50.3(c) II A(2)), shall be submission of an assurance of compliance and a review of the data submitted by the applicant. Where a determination cannot be made from this data, the agency shall require the submission of necessary additional information and shall take other steps necessary for making the determination. Such other steps may include, for example, communicating with local government officials or minority group organizations and field reviews. Where the requested assistance is for construction, a pre-approval review should determine whether the location and design of the project will provide service on a nondiscriminatory basis and whether persons will be displaced or relocated on a nondiscriminatory basis.

(c) *Post-approval review.* (1) Federal agencies shall establish and maintain an effective program of post-approval compliance reviews regarding approved new applications (see 28 CFR 50.3(c) II A), applications for continuation or renewal of assistance (28 CFR 50.3(c) II B) and all other federally assisted programs. Such reviews are to include periodic submission of compliance reports by recipients to the agencies and, where appropriate, field reviews of a representative number of major recipients. In carrying out this program, agency personnel shall follow agency manuals which establish appropriate review procedures and standards of evaluation. Additionally, agencies should consider incorporating a Title VI component into general program reviews and audits.

(2) The results of post-approval reviews shall be committed to writing and shall include specific findings of fact and recommendations. A determination of the compliance status of the recipient reviewed shall be made as promptly as possible.

(d) *Notice to assistant attorney general.* Federal agencies shall promptly notify the Assistant Attorney General of instances of probable noncompliance determined as the result of application reviews or post-approval compliance reviews.

§ 42.408 Complaint procedures.

(a) Federal agencies shall establish and publish in their guidelines procedures for the prompt processing and disposition of complaints. The complaint procedures shall provide for notification in writing to the complainant and the applicant or recipient as to the disposition of the complaint. Federal agencies should investigate complaints having apparent merit. Where such complaints are not investigated, good cause must exist and must be stated in the notification of disposition. In such cases, the agency shall ascertain the feasibility of referring the complaint to the primary recipient, such as a State agency, for investigation.

(b) Where a federal agency lacks jurisdiction over a complaint, the agency shall, wherever possible, refer the complaint to another federal agency or advise the complainant.

(c) Where a federal agency requires or permits recipient to process Title VI complaints, the agency shall ascertain whether the recipients' procedures for processing complaints are adequate. The federal agency shall obtain a written report of each such complaint and investigation and shall retain a review responsibility over the investigation and disposition of each complaint.

(d) Each federal agency shall maintain a log of Title VI complaints filed with it, and with its recipients, identifying each complainant by race, color, or national origin; the recipient; the nature of the complaint; the dates the complaint was filed and the investigation completed; the disposition; the date of disposition; and other pertinent information. Each recipient processing Title VI complaints shall be required to maintain a similar log. Federal agencies shall report to the Assistant Attorney General on January 1, 1977, and each six months thereafter, the receipt, nature and disposition of all such Title VI complaints.

§ 42.409 Employment practices.

Enforcement of Title VI compliance with respect to covered employment practices shall not be superseded by state and local merit systems relating to the employment practices of the same recipient.

§ 42.410 Continuing state programs.

Each state agency administering a continuing program which receives federal financial assistance shall be required to establish a Title VI compliance program for itself and other recipients which obtain federal assistance through it. The federal agencies shall require that such state compliance programs provide for the assignment of Title VI responsibilities to designated state personnel and comply with the minimum standards established in this subpart for federal agencies, including the maintenance of records necessary to permit federal officials to determine the Title VI compliance of the state agencies and the subrecipient.

§ 42.411 Methods of resolving noncompliance.

(a) Effective enforcement of Title VI requires that agencies take prompt action to achieve voluntary compliance in all instances in which noncompliance is found. Where such efforts have not been successful within a reasonable period of time, the agency shall initiate appropriate enforcement procedures as set forth in the 1965 Attorney General Guidelines, 28 CFR 50.3. Each agency shall establish internal controls to avoid unnecessary delay in resolving noncompliance, and shall promptly notify the Assistant Attorney General of any case in which negotiations have continued for more than sixty days after the making of the determination of probable noncompliance and shall state the reasons for the length of the negotiations.

(b) Agreement on the part of a noncomplying recipient to take remedial steps to achieve compliance with Title VI shall be set forth in writing by the recipient and the federal agency. The remedial plan shall specify the action necessary for the correction of Title VI deficiencies and shall be available to the public.

§ 42.412 Coordination.

(a) The Attorney General's authority under Executive Order 12250 is hereby delegated to the Assistant Attorney General, Civil Rights Division.

(b) Consistent with this subpart and the 1965 Attorney General Guidelines, 28 CFR 50.3, the Assistant Attorney General may issue such directives and take such other action as he deems necessary to insure that federal agencies carry out their responsibilities under Title VI. In addition, the Assistant Attorney General will routinely provide to the Director of the Office of Management and Budget copies of all inter-agency survey reports and related materials prepared by the Civil Rights Division that evaluate the effectiveness of an agency's Title VI compliance efforts. Where cases or matters are referred to the Assistant Attorney General for investigation, litigation or other appropriate action, the federal agencies shall, upon request, provide appropriate resources to the Assistant Attorney General to assist in carrying out such action.

[Order No. 670-76, 41 FR 52669, Dec. 1, 1976, as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 960-81, 46 FR 52357, Oct. 27, 1981]

§ 42.413 Interagency cooperation and delegations.

(a) Where each of a substantial number of recipients is receiving assistance for similar or related purposes from two or more federal agencies, or where two or more federal agencies cooperate in administering assistance for a given class of recipients, the federal agencies shall:

(1) Jointly coordinate compliance with Title VI in the assisted programs, to the extent consistent with the federal statutes under which the assistance is provided; and

(2) Designate one of the federal agencies as the lead agency for Title VI compliance purposes. This shall be done by a written delegation agreement, a copy of which shall be provided to the Assistant Attorney General and shall be published in the FEDERAL REGISTER.

(b) Where such designations or delegations of functions have been made, the agencies shall adopt adequate written procedures to assure that the same standards of compliance with Title VI are utilized at the operational levels by each of the agencies. This may include notification to agency personnel in handbooks, or instructions on any forms used regarding the compliance procedures.

(c) Any agency conducting a compliance review or investigating a complaint of an alleged Title VI violation shall notify any other affected agency upon discovery of its jurisdiction and shall subsequently inform it of the findings made. Such reviews or investigations may be made on a joint basis.

(d) Where a compliance review or complaint investigation under Title VI reveals a possible violation of Executive Order 11246, Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), or any other federal law, the appropriate agency shall be notified.

§ 42.414 Federal agency staff.

Sufficient personnel shall be assigned by a federal agency to its Title VI compliance program to ensure effective enforcement of Title VI.

§ 42.415 Federal agency Title VI enforcement plan.

Each federal agency subject to Title VI shall develop a written plan for enforcement which sets out its priorities and procedures. This plan shall be available to the public and shall address matters such as the method for selecting recipients for compliance reviews, the establishment of timetables and controls for such reviews, the procedure for handling complaints, the allocation of its staff to different compliance functions, the development of guidelines, the determination as to when guidelines are not appropriate, and the provision of civil rights training for its staff.

Subpart G—Nondiscrimination Based on Handicap in Federally Assisted Programs—Implementation of Section 504 of the Rehabilitation Act of 1973

GENERAL PROVISIONS

AUTHORITY: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); Sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); Sec. 120(a), Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95-602, 92 Stat. 2955 (1978); Executive Order 11914, April 28, 1976, and 45 CFR Part 85.

SOURCE: 45 FR 37622, June 3, 1980, unless otherwise noted.

§ 42.501 Purpose.

The purpose of this subpart is to implement section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in any program receiving Federal financial assistance.

§ 42.502 Application.

This subpart applies to each recipient of Federal financial assistance from the Department of Justice and to each program receiving or benefiting from such assistance. The requirements of this subpart do not apply to the ultimate beneficiaries of Federal financial assistance in the program receiving Federal financial assistance.

§ 42.503 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program receiving or benefiting from Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient may not discriminate on the basis of handicap in the following ways directly or through contractual, licensing, or other arrangements under any program receiving Federal financial assistance:

(i) Deny a qualified handicapped person the opportunity accorded others to participate in the program receiving Federal financial assistance;

(ii) Deny a qualified handicapped person an equal opportunity to achieve the same benefits that others achieve in the program receiving Federal financial assistance;

(iii) Provide different or separate assistance to handicapped persons or classes of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons or classes of handicapped persons with assistance as effective as that provided to others;

(iv) Deny a qualified handicapped person an equal opportunity to participate in the program by providing services to the program;

(v) Deny a qualified handicapped person an opportunity to participate as a member of a planning or advisory body;

(vi) Permit the participation in the program of agencies, organizations or persons which discriminate against the handicapped beneficiaries in the recipient's program;

(vii) Intimidate or retaliate against any individual, whether handicapped or not, for the purpose of interfering with any right secured by section 504 or this subpart.

(2) A recipient may not deny a qualified handicapped person the opportunity to participate in any program receiving Federal financial assistance on the ground that other specialized programs for handicapped persons are available.

(3) A recipient may not, directly or through contractual, licensing, or other arrangements, utilize criteria or methods of administration that either purposely or in effect discriminate on the basis of handicap, defeat or substantially impair accomplishment of the objectives of the recipient's program with respect to handicapped persons, or perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(4) A recipient may not, in determining the location or design of a facility, make selections that either purposely or in effect discriminate on the basis of handicap or defeat or substantially impair the accomplishment of the objectives of the program with respect to handicapped persons.

(5) A recipient is prohibited from discriminating on the basis of handicap in a program operating without Federal financial assistance where such action would discriminate against the handicapped beneficiaries or participants in any program of the recipient receiving Federal financial assistance.

(6) Any program not otherwise receiving Federal financial assistance but using a facility provided with the aid of Federal financial assistance after the effective date of this subpart is prohibited from discriminating on the basis of handicap.

(c) The exclusion of nonhandicapped persons or specified classes of handicapped persons from programs limited by Federal statute or executive order to handicapped persons or a different class of handicapped persons is not prohibited by this subpart.

(d) Recipients shall administer programs in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall insure that communications with their applicants, employees and beneficiaries are effectively conveyed to those having impaired vision and hearing.

(f) A recipient that employs fifteen or more persons shall provide appropriate auxiliary aids to qualified handicapped persons with impaired sensory, manual, or speaking skills where a refusal to make such provision would discriminatorily impair or exclude the participation of such persons in a program receiving Federal financial assistance. Such auxiliary aids may include brailled and taped material, qualified interpreters, readers, and telephonic devices. Attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature are not required under this section. Departmental officials may require recipients employing fewer than fifteen persons to provide auxiliary aids when this would not significantly impair the ability of the recipient to provide its benefits or services.

(g) The enumeration of specific forms of prohibited discrimination in this subpart is not exhaustive but only illustrative.

§ 42.504 Assurances required.

(a) *Assurances.* Every application for Federal financial assistance covered by this subpart shall contain an assurance that the program will be conducted in compliance with the requirements of section 504 and this subpart. Each agency within the Department that provides Federal financial assistance shall specify the form of the foregoing assurance for each of its assistance programs and shall require applicants for Department financial assistance to obtain like assurances from subgrantees, contractors and subcontractors, transferees, successors in interest, and others connected with the program. Each Department agency shall specify the extent to which an applicant will be required to confirm that the assurances provided by secondary recipients are being honored. Each assurance shall include provisions giving notice that the United States has a right to seek judicial enforcement of section 504 and the assurance.

(b) *Assurances from government agencies.* Assurances from agencies of State and local governments shall extend to any other agency of the same governmental unit if the policies of the other agency will affect the program for which Federal financial assistance is requested.

(c) *Assurances from institutions.* The assurances required with respect to any institution or facility shall be applicable to the entire institution or facility.

(d) *Duration of obligation.* Where the Federal financial assistance is to provide or is in the form of real or personal property, the assurance will obligate the recipient and any transferee for the period during which the property is being used for the purpose for which the Federal financial assistance is extended or for another purpose involving the provisions of similar benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(e) *Covenants.* With respect to any transfer of real property, the transfer document shall contain a covenant running with the land assuring nondiscrimination on the condition described in paragraph (d) of this section. Where the property is obtained from the Federal Government, the covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant.

(f) *Remedies.* The failure to secure either an assurance or a sufficient assurance from a recipient shall not impair the right of the Department to enforce the requirements of section 504 and this subpart.

§ 42.505 Administrative requirements for recipients.

(a) *Remedial action.* If the Department finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this subpart, the recipient shall take the remedial action the Department considers necessary to overcome the effects of the discrimination. This may include remedial action with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred, and with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to the requirements of this subpart, to increase the participation of qualified handicapped persons in the recipient's program.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this subpart, evaluate and modify its policies and practices that do not meet the requirements of this subpart. During this process the recipient shall seek the advice and assistance of interested persons, including handicapped persons or organizations representing handicapped persons. During this period and thereafter the recipient shall take any necessary remedial steps to eliminate the effects of discrimination that resulted from adherence to these policies and practices.

(2) A recipient employing fifty or more persons and receiving Federal financial assistance from the Department of $25,000 or more shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Department on request: (i) A list of the interested persons consulted, (ii) a description of areas examined and problems identified, and (iii) a description of modifications made and remedial steps taken.

(d) *Designation of responsible employee.* A recipient employing fifty or more persons and receiving Federal financial assistance from the Department of $25,000 or more shall designate at least one person to coordinate compliance with this subpart.

(e) *Adoption of grievance procedures.* A recipient employing fifty or more persons and receiving Federal financial assistance from the Department of $25,000 or more shall adopt grievance procedures that incorporate due process standards (*e.g.* adequate notice, fair hearing) and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this subpart. Such procedures need not be established with respect to complaints from applicants for employment. An employee may file a complaint with the Department without having first used the recipient's grievance procedures.

(f) *Notice.* (1) A recipient employing fifty or more persons and receiving Federal financial assistance from the Department of more than $25,000 shall, on a continuing basis, notify participants, beneficiaries, applicants, employees and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this subpart. The notification shall state, where appropriate, that the recipient does not discriminate in its programs with respect to access, treatment or employment. The notification shall also include identification of the person responsible for coordinating compliance with this subpart and where to file section 504 complaints with the Department and, where applicable, with the recipient. A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this subpart. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(2) Recruitment materials or publications containing general information that a recipient makes available to participants, beneficiaries, applicants, or employees shall include a policy

statement of nondiscrimination on the basis of handicap.

(g) The Department may require any recipient with fewer than fifty employees and receiving less than $25,000 in Federal financial assistance to comply with paragraphs (c)(2) and (d)-(f) of this section.

(h) The obligation to comply with this subpart is not affected by any State or local law or requirement or limited employment opportunities for handicapped persons in any occupation or profession.

EMPLOYMENT

§ 42.510 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall on the basis of handicap be subjected to discrimination in employment under any program receiving or benefiting from Federal financial assistance.

(2) A recipient shall make all decisions concerning employment under any program receiving Federal financial assistance in a manner which insures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(3) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this section. The relationships referred to in this paragraph include relationships with employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the recipient, and organizations providing training and apprenticeship programs, and with civil service agencies in State or local units of government.

(b) *Specific activities.* The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and application processing;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Pay and any other form of compensation and changes in compensation, including fringe benefits available by virtue of employment, whether or not administered by the recipient;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and selection for leaves of absence to pursue training;

(7) Employer-sponsored activities, including social or recreational programs; and

(8) Any other term, condition, or privilege of employment.

(c) In offering employment or promotions to handicapped individuals, recipients may not reduce the amount of compensation offered because of any disability income, pension or other benefit the applicant or employee receives from another source.

(d) A recipient's obligation to comply with this section is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 42.511 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate, based on the individual assessment of the applicant or employee, that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include making facilities used by employees readily accessible to and usable by handicapped persons, job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices (*e.g.*, telecommunication or other telephone devices), the provisions of readers or qualified interpreters, and other similar actions.

(c) Whether an accommodation would impose an undue hardship on the operation of a recipient's program depends upon a case-by-case analysis weighing factors that include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

A reasonable accommodation may require a recipient to bear more than an insignificant economic cost in making allowance for the handicap of a qualified applicant or employee and to accept minor inconvenience which does not bear on the ability of the handicapped individual to perform the essential duties of the job.

§ 42.512 Employment criteria.

(a) A recipient may not use any employment test or other selection criterion that tends to screen out handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and

(2) Alternative job-related tests or criteria that tend to screen out fewer handicapped persons are not shown by the appropriate Department officials to be available.

(b) A recipient shall administer tests using procedures (*e.g.*, auxiliary aids such as readers for visually-impaired persons or qualified sign language interpreters for hearing-impaired persons) that accommodate the special problems of handicapped persons to the fullest extent, consistent with the objectives of the test. When a test is administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results must accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 42.513 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination and may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 42.505(a) of this subpart, when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its Federally assisted program or activity pursuant to § 42.505(b) of this subpart, or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped: *Provided*, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary efforts;

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty: *Provided*, That:

(1) All entering employees are subjected to such an examination regardless of handicap, and

(2) The results of such an examination are used only in accordance with the requirements of this subpart.

(d) The applicant's medical record shall be collected and maintained on separate forms and kept confidential, except that the following persons may be informed:

(1) Supervisors and managers regarding restrictions on the work of handicapped persons and necessary accommodations;

(2) First aid and safety personnel if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act upon request for relevant information.

PROGRAM ACCESSIBILITY

§ 42.520 Discrimination prohibited.

Recipients shall insure that no qualified handicapped person is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under any program receiving Federal financial assistance because the recipient's facilities are inaccessible to or unusable by handicapped persons.

§ 42.521 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program to which this subpart applies so that the program, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This section does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Compliance procedures.* A recipient may comply with the requirement of paragraph (a) of this section through acquisition or redesign of equipment, reassignment of services to accessible buildings, assignment of aids to beneficiaries, delivery of services at alternate accessible sites, alteration of existing facilities, or any other method that results in making its program accessible to its program accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs to handicapped persons in the most integrated setting appropriate to obtain the full benefits of the program.

(c) *Small providers.* If a recipient with fewer than fifteen employees finds, after consultation with a handicapped person seeking its services, that there is no method of complying with § 42.521(a) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other available providers of those services that are accessible.

(d) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within ninety days of the effective date of this subpart. However, where structural changes in facilities are necessary, such changes shall be made as expeditiously as possible and shall be completed no later than three years from the effective date of this subpart. If structural changes to facilities are necessary, a recipient shall, within six months of the effective date of this subpart, develop a written plan setting forth the steps that will be taken to complete the changes together with a schedule for making the changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons and shall be made available for public inspection. The plan shall, at a mininum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify the steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(e) *Notice.* The recipient shall adopt and implement procedures to insure that interested persons, including mentally retarded persons or persons with impaired vision or hearing, special learning problems, or other disabilities, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

§ 42.522 New construction.

(a) *Design and construction.* Each new facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such a manner that the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this subpart. Any alterations to existing facilities shall, to the maximum extent feasible, be made in an accessible manner. Any alterations to existing facilities shall, to the maximum extent feasible, be made in an accessible manner.

(b) *American National Standards Institute accessibility standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped" published by the American National Standards Institute, Inc. (ANSI A 117.1-1961 (R1971)), which is incorporated by reference in this subpart, shall constitute compliance with paragraph (a) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility is provided.

PROCEDURES

§ 42.530 Procedures.

(a) The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 (28 CFR 42.106-42.110) apply to this subpart except that the provision contained in § 42.110(e) and § 42.108(c)(3) which requires the Attorney General's approval before the imposition of any sanction against a recipient does not apply to programs funded by LEAA, NIJ, BJS, OJARS and OJJDP. The applicable provisions contain requirements for compliance information (§ 42.106), conduct of investigations (§ 42.107), procedure for effecting compliance (§ 42.108), hearings (§ 42.109), and decisions and notices (§ 42.110). (See Appendix C.)

(b) In the case of programs funded by LEAA, NIJ, BJS, OJARS and OJJDP, the timetables and standards for investigation of complaints and for the conduct of compliance reviews contained in § 42.205(c)(1) through (c)(3) and § 42.206 (c) and (d) are applicable to this subpart except that any finding of noncompliance shall be enforced as provided in paragraph (a) of this section. (See Appendix D.)

(c) In the case of programs funded by LEAA, NIJ, BJS, OJARS and OJJDP, the refusal to provide requested information under paragraph (a) of this section and § 42.106 will be enforced pursuant to the provisions of section 803(a) of Title I of the Omnibus Crime Control and Safe Streets Act, as amended by the Justice System Improvement Act of 1979, Pub. L. 96-157, 93 Stat. 1167.

(d) For acts of discrimination occurring prior to the effective date of this subpart, the 180-day limitation period for filing of complaints (§ 42.107 of this Title) will apply from that date.

(e) The Department will investigate complaints alleging discrimination in violation of section 504 occurring prior to the effective date of this subpart where the language of the statute or HEW's interagency guidelines (43 FR 2132, January 13, 1978) implementing Executive Order 11914 (41 FR 17871, April 28, 1976) provided notice that the challenged policy or practice was unlawful.

DEFINITIONS

§ 42.540 Definitions.

As used in this subpart the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended (29 U.S.C. 701 *et seq.*).

(b) "Section 504" means section 504 of the Act (29 U.S.C. 794).

(c) "Department" means the Department of Justice.

(d) "LEAA" means the Law Enforcement Assistance Administration; "NIJ" means the National Institute of

Justice; "BJS" means the Bureau of Justice Statistics; "OJARS" means the Office of Justice Assistance, Research and Statistics; "OJJDP" means Office of Juvenile Justice and Delinquency Prevention.

(e) "Recipient" means any State or unit of local goverment, any instrumentality of a State or unit of local government, any public or private agency, institution, organization, or other public or private entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferree of a recipient, but excluding the ultimate beneficiary of the assistance.

(f) "Federal financial assistance" means any grant, cooperative agreement, loan, contract (other than a direct Federal procurement contract or a contract of insurance or guaranty), subgrant, contract under a grant or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel;

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government;

(4) Any other thing of value by way of grant, loan, contract or cooperative agreement.

(g) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(h) The term "program" means the operations of the agency or organizational unit of government receiving or substantially benefiting from the Federal assistance awarded, *e.g.*, a police department or department of corrections.

(i) "Ultimate beneficiary" is one among a class of persons who are entitled to benefit from, or otherwise participate in, programs receiving Federal financial assistance and to whom the protections of this subpart extend. The ultimate beneficiary class may be the general public or some narrower group of persons.

(j) "Benefit" includes provision of services, financial aid or disposition (*i.e.*, treatment, handling, decision, sentencing, confinement, or other prescription of conduct).

(k) "Handicapped person". (1) "Handicapped person" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. For purposes of employment, such term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

(2) As used in this subpart the phrase:

(i) "Physical or mental impairment" means: (A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine; (B) any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug and alcohol abuse.

(ii) "Major life activities" mean functions such as caring for one's self, performing manual tasks walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means: (A) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (k)(2)(i) of this section but is treated by a recipient as having such an impairment.

(l) "Qualified handicapped person" means: (1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(m) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (k) of this section.

(n) "Drug abuse" means: (1) The use of any drug or substance listed by the Department of Justice in 21 CFR 1308.11, under authority of the Controlled Substances Act, 21 U.S.C. 801, as a controlled substance unavailable for prescription because:

(i) The drug or substance has a high potential for abuse,

(ii) The drug or other substance has no currently accepted medical use in treatment in the United States,

(iii) There is a lack of accepted safety for use of the drug or other substance under medical supervision;

(2) The misuse of any drug or substance listed by the Department of Justice in 21 CFR 1308.12 through 1308.15 under authority of the Controlled Substances Act as a controlled substance available for prescription.

Examples of: (1) Include certain opiates and opiate derivatives (*e.g.*, heroin) and hallucinogenic substances (*e.g.*, marihuana, mescaline, peyote) and depressants (*e.g.*, methaqualone). Examples of (2) include opium, coca leaves, methadone, amphetamines and barbiturates.

(o) "Alcohol abuse" includes alcoholism but also means any misuse of alcohol which demonstrably interferes with a person's health, interpersonal relations or working.

APPENDICES TO SUBPART G

APPENDIX A—FEDERAL FINANCIAL ASSISTANCE OF THE DEPARTMENT OF JUSTICE TO WHICH THIS SUBPART APPLIES

1. Assistance provided by LEAA, NIJ, BJS, OJARS and OJJDP under Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Justice System Improvement Act of 1979, Pub. L. 96-157, 93 Stat. 1167, and the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601 *et seq.*, as amended.

2. Assistance provided by the Federal Bureau of Investigation through its National Academy and law enforcement training activities and laboratory facilities under the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

3. Assistance provided by the Bureau of Prisons through its National Institute of Corrections for training programs under the Juvenile Justice and Delinquency Prevention Act, as amended, 18 U.S.C. 4351-4353.

4. Assistance provided by the Drug Enforcement Administration under the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801 *et seq.*

5. Assistance provided by the Attorney General for antitrust enforcement under section 116 of the Crime Control Act of 1976, 42 U.S.C. 3739.[5]

6. Assistance provided by the Department under the Disputes Resolution Act, Pub. L. 96-190, 94 Stat. 17.

7. Assistance provided by the Department under the State and Local Drug Strike Force Grant Program, Pub. L. 96-68, Title II, 93 Stat. 419.

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[5] Congress has not appropriated funds for this program for Fiscal Year 1980 which ends September 30, 1980. The Department made its last grants under the program by September 30, 1979.

APPENDIX B—[RESERVED]

APPENDIX C—DEPARTMENT REGULATIONS UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 (28 CFR 42.106-42.110) WHICH APPLY TO THIS SUBPART

EDITORIAL NOTE: For the text of Appendix C, see §§ 42.106 through 42.110 of this part.

APPENDIX D—OJARS' REGULATIONS UNDER THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT, AS AMENDED WHICH APPLY TO THIS SUBPART (28 CFR 42.205 AND 42.206)

EDITORIAL NOTE: For the text of Appendix D, see §§ 42.205 and 42.206 of this part.

PART 43—RECOVERY OF COST OF HOSPITAL AND MEDICAL CARE AND TREATMENT FURNISHED BY THE UNITED STATES

Sec.
43.1 Administrative determination and assertion of claims.
43.2 Obligations of persons receiving care and treatment.
43.3 Settlement and waiver of claims.
43.4 Annual reports.

AUTHORITY: Sec. 2, 76 Stat. 593; 42 U.S.C. 2651-2653, E.O. 11060; 3 CFR, 1959-1963 Comp.

CROSS REFERENCE: For establishment and determination of certain rates for use in connection with recovery from tortiously liable third persons, see FR Doc. 63-11387, Bureau of the Budget, 28 FR 11516, Oct. 29, 1963.

§ 43.1 Administrative determination and assertion of claims.

(a) The head of a Department or Agency of the United States responsible for the furnishing of hospital, medical, surgical or dental care and treatment (including prostheses and medical appliances), or his designee, shall determine whether such hospital, medical, surgical or dental care and treatment was or will be furnished for an injury or disease caused under circumstances entitling the United States to recovery under the Act of September 25, 1962 (Pub. L. 87-693); and, if it is so determined, shall, subject to the provisions of § 43.3, assert a claim against such third person for the reasonable value of such care and treatment. The Department of Justice, or a Department or Agency responsible for the furnishing of such care and treatment may request any other Department or Agency to investigate, determine, or assert a claim under the regulations in this part.

(b) Each Department or Agency is authorized to implement the regulations in this part to give full force and effect thereto.

(c) The provisions of the regulations in this part shall not apply with respect to hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished by the Veterans Administration to an eligible veteran for a service-connected disability under the provisions of Chapter 17 of Title 38 of the United States Code.

[Order No. 289-62, 27 FR 11317, Nov. 16, 1962]

§ 43.2 Obligations of persons receiving care and treatment.

(a) In the discretion of the Department or Agency concerned, any person furnished care and treatment under circumstances in which the regulations in this part may be applicable, his guardian, personal representative, estate, dependents or survivors may be required:

(1) To assign in writing to the United States his claim or cause of action against the third person to the extent of the reasonable value of the care and treatment furnished or to be furnished, or any portion thereof;

(2) To furnish such information as may be requested concerning the circumstances giving rise to the injury or disease for which care and treatment is being given and concerning any action instituted or to be instituted by or against a third person;

(3) To notify the Department or Agency concerned of a settlement with, or an offer of settlement from, a third person; and

(4) To cooperate in the prosecution of all claims and actions by the United States against such third person.

[Order No. 289-62, 27 FR 11317, Nov. 16, 1962, as amended by Order No. 896-80, 45 FR 39841, June 12, 1980]

§ 43.3 Settlement and waiver of claims.

(a) The head of the Department or Agency of the United States asserting such claim, or his designee, may: (1)

Accept the full amount of a claim and execute a release therefor, (2) compromise or settle and execute a release of any claim, not in excess of $40,000, which the United States has for the reasonable value of such care or treatment, or (3) waive and in this connection release any claim, not in excess of $40,000, in whole or in part, either for the convenience of the Government, or if he determines that collection would result in undue hardship upon the person who suffered the injury or disease resulting in the care and treatment described in § 43.1.

(b) Claims in excess of $40,000 may be compromised, settled, waived, and released only with the prior approval of the Department of Justice.

(c) The authority granted in this section shall not be exercised in any case in which: (1) The claim of the United States for such care and treatment has been referred to the Department of Justice, or (2), a suit by the third party has been instituted against the United States or the individual who received or is receiving the care and treatment described above and the suit arises out of the occurrence which gave rise to the third-party claim of the United States.

(d) The Departments and Agencies concerned shall consult the Department of Justice in all cases involving: (1) Unusual circumstances, (2) a new point of law which may serve as a precedent, or (3) a policy question where there is or may be a difference of views between any of such Departments and Agencies.

[Order No. 373-67, 32 FR 713, Jan. 21, 1967, as amended by Order No. 763-77, 43 FR 1066, Jan. 6, 1978]

§ 43.4 Annual reports.

The head of each Department or Agency concerned, or his designee, shall report annually to the Attorney General, by March 1, commencing in 1964, the number and dollar amount of claims asserted against, and the number and dollar amount of recoveries from third persons.

[Order No. 289-62, 27 FR 11317, Nov. 16, 1962]

PART 45—STANDARDS OF CONDUCT

Sec.

45.735-1 Purpose and scope.
45.735-2 Basic policy.
45.735-3 Definitions.
45.735-4 [Reserved]
45.735-5 Disqualification arising from private financial interests.
45.735-6 Activities and compensation of employees in claims against and other matters affecting the Government.
45.735-7 Disqualification of former employees; disqualification of partners of current employees.
45.735-7a Disciplinary proceedings under 18 U.S.C. 207(j).
45.735-8 Salary of employees payable only by United States.
45.735-9 Private professional practice and outside employment.
45.735-10 Improper use of official information.
45.735-11 Investments.
45.735-12 Speeches, publications and teaching.
45.735-13 [Reserved]
45.735-14 Gifts, entertainment, and favors.
45.735-14a Reimbursement for travel and subsistence; acceptance of awards.
45.735-15 Employee indebtedness.
45.735-16 Misuse of Federal property.
45.735-17 Gambling, betting, and lotteries.
45.735-18 [Reserved]
45.735-19 Partisan political activities.
45.735-21 Miscellaneous statutory provisions.
45.735-22 Reporting of outside interests by persons other than special Government employees.
45.735-23 Reporting of outside interests by special Government employees.
45.735-24 Reviewing statements of financial interests.
45.735-25 Supplemental regulations.
45.735-26 Designated Agency Ethics Official.
45.735-27 Public financial disclosure requirements.

APPENDIX—CODE OF ETHICS FOR GOVERNMENT SERVICE

AUTHORITY: 80 Stat. 379; 5 U.S.C. 301, Reorganization Plan No. 2 of 1950, 64 Stat. 1261; 3 CFR 1949-1953 Comp., E.O. 11222; 3 CFR, 1964-1965 Comp.; 3 CFR Part 735, unless otherwise noted.

SOURCE: Order No. 350-65, 30 FR 17202, Dec. 31, 1965, unless otherwise noted.

CROSS REFERENCE: For Attorney General's "Memorandum Regarding the Conflict of Interest Provisions of Pub. L. 87-849", see appendix to this part.

§ 45.735-1 Purpose and scope.

(a) In conformity with sections 201 through 209 of Title 18 of the United States Code (as enacted by Pub. L. 87-849) and other statutes of the United States, and in conformity with Executive Order No. 11222 of May 8, 1965, and Title 5, Chapter I, Part 735, of the Code of Federal Regulations, relating to conflicts of interest and ethical standards of behavior, this part prescribes policies, standards and instructions with regard to the conduct and behavior of employees and former employees (as defined in § 45.735-3 (b) and (d) respectively) of the Department of Justice.

(b) This part, among other things, reflects prohibitions and requirements imposed by the criminal and civil laws of the United States. However, the paraphrased restatements of criminal and civil statutes contained in this part are designed for informational purposes only and in no way constitute an interpretation or construction thereof that is binding upon the Department of Justice or the Federal Government. Moreover, this part does not purport to paraphrase or enumerate all restrictions or requirements imposed by statutes, Executive orders, regulations or otherwise upon Federal employees and former Federal employees. The omission of a reference to any such restriction or requirement in no way alters the legal effect of that restriction or requirement and any such restriction or requirement, as the case may be, continues to be applicable to employees and former employees in accordance with its own terms. Furthermore, attorneys employed by the Department should be guided in their conduct by the Code of Professional Responsibility of the American Bar Association. Interpretations and applications of the Code to an attorney's official duties should be obtained pursuant to § 45.735-2(e).

(c) Any violation of any provision of this part shall make the employee involved subject to appropriate disciplinary action which shall be in addition to any penalty which might be prescribed by statute or regulation.

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 960-81, 46 FR 52357, Oct. 27, 1981]

§ 45.735-2 Basic policy.

Employees shall:

(a) Conduct themselves in a manner that creates and maintains respect for the Department of Justice and the U.S. Government. In all their activities, personal and official, they should always be mindful of the high standards of behavior expected of them;

(b) Employees should discuss with their immediate supervisors any problems concerning ethics or professional conduct that they cannot resolve personally by reference to the standards set forth in this part. Supervisors should ascertain all pertinent information bearing upon any such problem coming to their attention and shall take prompt action to see that problems that cannot be readily resolved are submitted to the Assistant Attorney General or other official in charge of the employees' Office, Board or Division. In the case of personnel employed by the United States Attorneys, problems may be referred to the Director of the Executive Office for United States Attorneys.

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 960-81, 46 FR 52358, Oct. 27, 1981]

§ 45.735-3 Definitions.

(a) *Division.* "Division" means a principal component of the Department of Justice, including a division, bureau, service, office or board.

(b) *Employee.* "Employee" means an officer or employee of the Department of Justice and includes a special Government employee (as defined in paragraph (c) of this section) in the absence of contrary indication. Presidential appointees shall be deemed employees for the purposes of this part. In situations in which this part requires an employee to report information to, or seek approval for certain activities from, the head of a division, an employee who is the head of a division or who is an appointee of the Attorney General not assigned to a division, shall report to, or seek approval from, the Deputy Attorney General, and the Deputy Attorney General shall report to, or seek approval from, the Attorney General.

(c) *Special Government employee.* "Special Government employee" means an officer or employee of the Department of Justice who is retained, designated, appointed, or employed to perform, with or without compensation, for not more than 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis.

(d) *Former employee.* "Former employee" means a former Department of Justice employee or former special Government employee, as defined in paragraph (c) of this section.

(e) *Person.* "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 960-81, 46 FR 52358, Oct. 27, 1981]

§ 45.735-4 [Reserved]

§ 45.735-5 Disqualification arising from private financial interests.

(a) No employee shall participate personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, unless authorized to do so in accordance with the following described procedure:

(1) The employee shall inform the head of his division of the nature and circumstances of the matter and of the financial interest involved and shall request a determination as to the propriety of his participation in the matter.

(2) The head of the division, after examining the information submitted, may relieve the employee from participation in the matter, or he may submit the matter to the Deputy Attorney General with recommendations for appropriate action. In cases so referred to him, the Deputy Attorney General may relieve the employee from participation in the matter or may approve the employee's participation in the matter upon determining in writing that the interest involved is not so substantial as to be likely to affect the integrity of the services which the Government may expect from such employee.

(b) The financial interests described below are hereby exempted from the prohibition of 18 U.S.C. 208(a) as being too remote or too inconsequential to affect the integrity of an employee's services in a matter:

The stock, bond, or policy holdings of an employee in a mutual fund, investment company, bank or insurance company which owns an interest in an entity involved in the matter, provided that in the case of a mutual fund, investment company or bank the fair value of such stock or bond holding does not exceed 1 percent of the value of the reported assets of the mutual fund, investment company, or bank.

(18 U.S.C. 208)

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 960-81, 46 FR 52358, Oct. 27, 1981]

§ 45.735-6 Activities and compensation of employees in claims against and other matters affecting the Government.

(a) No employee, otherwise than in the proper discharge of his official duties, shall—

(1) Act as agent or attorney for prosecuting any claim against the United States, or receive any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim;

(2) Act as agent or attorney for anyone before any department, agency, court, court-martial, office, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular matter in which

the United States is a party or has a direct and substantial interest; or

(3) Directly or indirectly receive or agree to receive, or ask, demand, solicit or seek, any compensation for any services rendered or to be rendered either by himself or another, before any department, agency, court, court-martial, officer, or any civil, military, or naval commission, in relation to any matter enumerated and described in paragraph (a)(2) of this section.

(b) A special Government employee shall be subject to paragraph (a) of this section only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or (2) which is pending in the Justice Department: *Provided,* That paragraph (b)(2) of this section shall not apply in the case of a special Government employee who has served in the Justice Department no more than 60 days during the immediately preceding period of 365 consecutive days.

(c) Nothing in this part shall be deemed to prohibit an employee, if it is not otherwise inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person in a disciplinary, loyalty, or other Federal personnel administration proceeding involving such person.

(d) Nothing in this part shall be deemed to prohibit an employee from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, as defined in section 202(b) of Title 18 of the United States Code, provided that the head of his division approves.

(e) Nothing in this part shall be deemed to prohibit an employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(18 U.S.C. 203, 205)

§ 45.735-7 Disqualification of former employees; disqualification of partners of current employees.

(a) No individual who has been an employee shall, after his employment has ceased, knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before, or, with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) (1) to any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, (2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and (3) in which he participated personally and substantially as an employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed. (18 U.S.C. 207(a))

(b) No individual who has been an employee shall, within two years after his employment has ceased, knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before, or with intent to influence, make any oral or written communication on behalf of any other person (except the United States) (1) to an organization enumerated in paragraph (a)(1) of this section, or any officer or employee thereof, (2) in connection with any matter enumerated and described in paragraph (a)(2) of this section, and

(3) which was actually pending under his official responsibility as an employee within a period of one year prior to the termination of such responsibility. (18 U.S.C. 207(b)(i))

(c) No individual who has been an employee in an executive level position, in a position with a comparable or greater rate of pay, or in a position that involved significant decisionmaking or supervisory responsibility as designated by the Director of the Office of Government Ethics under 18 U.S.C. 207(d)(1)(C), shall, within two years after his employment in such position has ceased, knowingly represent or aid, counsel, advise, consult, or assist in representing any other person (except the United States) by personal presence at any formal or informal appearance before (1) an organization enumerated in paragraph (a)(1) of this section, or an officer or employee thereof, (2) in connection with any matter enumerated and described in paragraph (a)(2) of this section, and (3) in which he participated personally or substantially as an employee. (18 U.S.C. 207(b)(ii))

(d) No individual (other than one who was a special Government employee with service of less than sixty days in a given calendar year) who has been an employee in an executive level position or a position with a comparable or greater rate of pay, or in a position which involved significant decisionmaking or supervisory responsibility as designated by the Director of the Office of Government Ethics under 18 U.S.C. 207(d)(1)(C), shall, within one year after such employment has ceased, knowingly engage in conduct described in the next sentence. The prohibited knowing conduct is that of acting as attorney or agent for, or otherwise representing, anyone other than the United States in any formal or informal appearance before, or with the intent to influence, making any oral or written communication on behalf of anyone other than the United States (1) to the Department of Justice, or any employee thereof, (2) in connection with any rulemaking or any matter enumerated and described in paragraph (a)(2) of this section, and (3) which is pending before this Department or in which it has a direct and substantial interest. (18 U.S.C. 207(c); but see 5 CFR 737.13, 737.31 and 737.32)

(e) No partner of an employee shall act as agent or attorney for anyone other than the United States before an organization enumerated in paragraph (a)(1) of this section, or any officer or employee thereof, in connection with any matter enumerated and described in paragraph (a)(2) of this section in which such Government employee is participating or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility.

(18 U.S.C. 207(g))

[Order No. 885-80, 45 FR 26326, Apr. 18, 1980]

§ 45.735–7a Disciplinary proceedings under 18 U.S.C. 207(j).

(a) Upon a determination by the Assistant Attorney General in charge of the Criminal Division (Assistant Attorney General), after investigation, that there is reasonable cause to believe that a former officer or employee, including a former special Government employee, of the Department of Justice (former departmental employee) has violated 18 U.S.C. 207 (a), (b) or (c), the Assistant Attorney General shall cause a copy of written charges of the violation(s) to be served upon such individual, either personally or by registered mail. The charges shall be accompanied by a notice to the former departmental employee to show cause within a specified time of not less than 30 days after receipt of the notice why he or she should not be prohibited from engaging in representational activities in relation to matters pending in the Department of Justice, as authorized by 18 U.S.C. 207(j), or subjected to other appropriate disciplinary action under that statute. The notice to show cause shall include:

(1) A statement of allegations, and their basis, sufficiently detailed to enable the former departmental employee to prepare an adequte defense,

(2) Notification of the right to a hearing, and

(3) An explanation of the method by which a hearing may be requested.

(b) If a former departmental employee who submits an answer to the notice to show cause does not request a hearing or if the Assistant Attorney General does not receive an answer within five days after the expiration of the time prescribed by the notice, the Assistant Attorney General shall forward the record, including the report(s) of investigation, to the Attorney General. In the case of a failure to answer, such failure shall constitute a waiver of defense.

(c) Upon receipt of a former departmental employee's request for a hearing, the Assistant Attorney General shall notify him or her of the time and place thereof, giving due regard both to such person's need for an adequate period to prepare a suitable defense and an expeditious resolution of allegations that may be damaging to his or her reputation.

(d) The presiding officer at the hearing and any related proceedings shall be a federal administrative law judge or other federal official with comparable duties. He shall insure that the former departmental employee has, among others, the rights:

(1) To self-representation or representation by counsel,

(2) To introduce and examine witnesses and submit physical evidence,

(3) To confront and cross-examine adverse witnesses,

(4) To present oral argument, and

(5) To a transcript or recording of the proceedings, upon request.

(e) The Assistant Attorney General shall designate one or more officers or employees of the Department of Justice to present the evidence against the former departmental employee and perform other functions incident to the proceedings.

(f) A decision adverse to the former departmental employee must be sustained by substantial evidence that he violated 18 U.S.C. 207 (a), (b) or (c).

(g) The presiding officer shall issue an initial decision based exclusively on the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, and shall set forth in the decision findings and conclusions, supported by reasons, on the material issues of fact and law presented on the record.

(h) Within 30 days after issuance of the initial decision, either party may appeal to the Attorney General, who in that event shall issue the final decision based on the record of the proceedings or those portions thereof cited by the parties to limit the issues. If the final decision modifies or reverses the initial decision, the Attorney General shall specify the findings of fact and conclusions of law that vary from those of the presiding officer.

(i) If a former departmental employee fails to appeal from an adverse initial decision within the prescribed period of time, the presiding officer shall forward the record of the proceedings to the Attorney General.

(j) In the case of a former departmental employee who filed an answer to the notice to show cause but did not request a hearing, the Attorney General shall make the final decision on the record submitted to him by the Assistant Attorney General pursuant to subsection (b) of this section.

(k) The Attorney General, in a case where:

(1) The defense has been waived,

(2) The former departmental employee has failed to appeal from an adverse initial decision, or

(3) The Attorney General has issued a final decision that the former departmental employee violated 18 U.S.C. 207 (a), (b) or (c),

may issue an order:

(i) Prohibiting the former departmental employee from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, the Department of Justice on a pending matter of business for a period not to exceed five years, or

(ii) Prescribing other appropriate disciplinary action.

(l) An order issued under either paragraph (i) or (ii) of paragraph (k) of this section may be supplemented by a directive to officers and employees of the Department of Justice not to engage in conduct in relation to the former departmental employee that would contravene such order.

[Order No. 889-80, 45 FR 31717, May 14, 1980]

§ 45.735-8 Salary of employees payable only by United States.

(a) No employee, other than a special Government employee or an employee serving without compensation, shall receive any salary, or any contribution to or supplement of salary, as compensation for his services as an employee of the Department of Justice, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality.

(b) Nothing in this part shall be deemed to prohibit an employee from continuing to participate in a bona fide pension, retirement, group life, health, or accident insurance, profit-sharing, stock bonus, or other employee, welfare, or benefit plan maintained by a former employer.

(18 U.S.C. 209)

§ 45.735-9 Private professional practice and outside employment.

(a) No professional employee shall engage in the private practice of his profession, including the practice of law, except as may be authorized by or under paragraph (c) or (e) of this section. Acceptance of a forwarding fee shall be deemed to be within the foregoing prohibition. Teaching will not be considered "professional practice" for purposes of this rule. Employees who wish to undertake teaching engagements should consult § 45.735-12.

(b) Paragraph (a) of this section shall not be applicable to special Government employees.

(c)(1) Employees are encouraged to provide public interest professional services so long as such services do not interfere with their official responsibilities. Such public interest services must be conducted without compensation, and during off-duty hours or while on leave. Leave will be granted for court appearances or other necessary incidents of representation in accordance with established policy on leave administration (see DOJ Order 1630.1A). Representation of Federal employees in Equal Employment Opportunity (EEO) complaint procedures may be provided in accordance with § 45.735-6(c) of this title and the Department's established EEO policy (see DOJ Order 1713.5) rather than this subsection. No employee may seek, or assist a plaintiff who seeks, an award of attorney's fees for services provided pursuant to this subsection.

(2) Any *pro bono* services provided by an employee must be consistent with Federal law and regulations. In determining whether to provide *pro bono* services in a particular matter, the employee should give particular attention to the requirements of paragraph (f) of this section. Notice of intention to provide *pro bono* services shall be given in writing to the head of the employee's division (or in the case of an Assistant U.S. Attorney to the Executive Office of U.S. Attorneys with the U.S. Attorney's comments appended thereto). Should the division head or Executive Office believe the public interest professional service may not conform to the requirements of this section the disagreement will promptly be referred to the Deputy Attorney General for final resolution.

(3) Public interest services should fall into one of the following categories:

(i) Service to a client who does not have the financial resources to pay for professional services;

(ii) Services to assert or defend individual or public rights which society has a special interest in protecting;

(iii) Services to further the organizational purpose of a charitable, religious, civic, or educational organization; or

(iv) Services designed to improve the administration of justice.

(d) Employees may provide professional services, pursuant to § 45.735-6(d) of this title, to those relatives and personal fiduciaries who are listed in that section.

(e) The Deputy Attorney General may make other specific exceptions to paragraph (a) of this section in unusual circumstances. Application for exceptions must be made in writing stating the reasons therefor, and directed to the Deputy Attorney General through the applicant's superior. Action taken by the Deputy Attorney General with respect to any such application shall be made in writing and shall be directed to the applicant.

(f) No employee shall engage in any professional practice under this section or any other outside employment if—

(1) The activity will in any manner interfere with the proper and effective performance of the employee's official duties;

(2) The activity will create or appear to create a conflict of interest;

(3) The activity will reflect adversely upon the Department of Justice;

(4) The employee's position in the Department of Justice will influence or appear to influence the outcome of the matter;

(5) The activity will involve assertions that are contrary to the interests or positions of the United States; or

(6) The activity involves any criminal matter or proceeding whether Federal, State or local, or any other matter or proceeding in which the United States (including the District of Columbia government) is a party or has a direct and substantial interest.

[Order No. 909-80, 45 FR 57125, Aug. 27, 1980, as amended by Order No. 960-81, 46 FR 52358, Oct. 27, 1981]

§ 45.735-10 Improper use of official information.

No employee shall use for financial gain for himself or for another person, or make any other improper use of, whether by direct action on his part or by counsel, recommendation, or suggestion to another person, information which comes to the employee by reason of his status as a Department of Justice employee and which has not become part of the body of public information.

§ 45.735-11 Investments.

No employee shall make investments: (a) In enterprises which it is reasonable to believe will be involved in decisions to be made by him, (b) on the basis of information which comes to him by reason of his status as a Department of Justice employee and which has not become part of the body of public information or (c) which are reasonably likely to create any conflict in the proper discharge of his official duties.

§ 45.735-12 Speeches, publications and teaching.

(a) No employee shall accept a fee from an outside source on account of a public appearance, speech, lecture, or publication if the public appearance or the preparation of the speech, lecture, or publication was a part of the official duties of the employee.

(b) No employee shall receive compensation or anything of monetary value for any consultation, lecture, teaching, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs or operations of the Department, or which draws substantially on official data or ideas which have not become part of the body of public information.

(c) No employee shall engage, whether with or without compensation, in teaching, lecturing or writing that is dependent on information obtained as a result of his Government employment except when that information has been made available to the general public or when the Deputy Attorney General gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(d)(1) The Attorney General, Deputy Attorney General, Associate Attorney General, and the heads of divisions shall not make speeches or otherwise lend their names or support in a prominent fashion to a fundraising drive or a fundraising event or similar event intended for the benefit of any person. No Department of Justice employee or special Government employee shall engage in any of these activities if the invitation was extended primarily because of his official position with the Department or if the fact of his official position with the Department has been or will be used in the promotion of the event to any significant degree.

(2) For purposes of this subsection, an event wil be regarded as a fundrais-

ing event if any portion of the ticket or other cost of admission is designated as a charitable contribution for tax purposes, if one of its purposes is to produce net proceeds for the benefit of any person or if it is a "kickoff" dinner or similar occasion that is part of a broader fundraising effort.

(3) Nothing in this subsection shall apply to the Combined Federal Campaign or any other authorized fundraising drive directed primarily at Federal employees, or to a fundraising event of an organization which is exempt from taxation under 26 U.S.C. 501(c)(3).

(4) Nothing in this subsection shall apply to a meeting, seminar, or conference sponsored by a professional or other appropriate organization where a tuition or other fee is charged for attendance if such tuition or fee is reasonable under the circumstances.

(e) When an employee is prohibited by this section from accepting compensation for an activity, he is also prohibited from suggesting that the person offering such compensation donate it to a particular charity or other third party.

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 760-77, 42 FR 64119, Dec. 22, 1977; Order No. 807-78, 43 FR 52702, Nov. 14, 1978; 44 FR 36028, June 20, 1979; Order No. 887-80, 45 FR 29574, May 5, 1980; Order No. 960-81, 46 FR 52358, Oct. 27, 1981]

§ 45.735–13 [Reserved]

§ 45.735–14 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (c) of this section, an employee other than a special Government employee shall not solicit or accept, for himself or another person, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Department;

(2) Conducts operations or activities that are regulated by the Department;

(3) Is engaged, either as principal or attorney, in proceedings before the Departmental or in court proceedings in which the United States is an adverse party; or

(4) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) Except as provided in paragraph (c) of this section, a special Government employee shall be subject to the prohibition set forth in paragraph (a)(4) of this section.

(c) Paragraphs (a) and (b) of this section shall not be construed to prohibit:

(1) Solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child or other close relative when the circumstances make it clear that the motivation for the action is a personal or family relationship.

(2) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting.

(3) Acceptance of loans from banks or other financial institutions on customary terms of finance for proper and usual activities of employees, such as home mortgage loans.

(4) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal intrinsic value.

(d) No employee shall accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution (Art. I, sec. 9, cl. 8) and in Pub. L. 89-673, 80 Stat. 952.

(e) No employee shall solicit a contribution from another employee for a gift to an official superior, nor make a donation as a gift to an official superior, nor accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(5 U.S.C. 7351)

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 383-67, 32 FR 13217, Sept. 19, 1967; Order No. 960-81, 46 FR 52358, Oct. 27, 1981]

§ 45.735-14a Reimbursement for travel and subsistence; acceptance of awards.

(a) Employees may not accept reimbursement for travel or expenses incident to travel on official business from any source other than the Federal Government. However, employees may accept such reimbursement, from organizations that are exempt from taxation under the Internal Revenue Code, 26 U.S.C. 501(c)(3) for expenses incident to training or the attendance at meetings in accordance with 5 U.S.C. 4111 and 5 CFR 410.702.

(b) Employees may accept reimbursement for travel or expenses incident to travel of a nonofficial nature, so long as the circumstances are such that acceptance of the reimbursement is compatible with other restrictions set forth in this part.

(c) Employees will not be deemed to be on official business when they attend the meetings of a charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization if they have not been directed by the Department to attend the meeting and if they do not receive Government reimbursement for their travel or other expenses incident to attendance at the meetings.

(d) Employees may accept awards from the organizations described in paragraph (c) of this section, so long as the circumstances are such that acceptance is compatible with other restrictions set forth in this part.

(e) Employees may accept reimbursement for travel or expenses incident to travel from an organization described in paragraph (a) or (c) of this section for the actual expenses of an accompanying spouse in connection with the employee's attendance at the meetings of the organization or acceptance of an award from the organization. The acceptance of spousal expenses under this paragraph shall not depend upon the official or nonofficial nature of the employee's travel, but it must be otherwise compatible with the restrictions set forth in this part. In particular, employees may not accept spousal expenses from an organization that:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Department.

(2) Conducts operations or activities that are regulated by the Department.

(3) Is engaged, either as principal or attorney, in proceedings before the Department or in court proceedings in which the United States is an adverse party.

(4) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

[Order No. 960-81, 46 FR 52358, Oct. 27, 1981]

§ 45.735-15 Employee indebtedness.

The Department of Justice considers the indebtedness of its employees to be essentially a matter of their own concern. The Department of Justice will not be placed in the position of acting as a collection agency or of determining the validity or amount of contested debts. Nevertheless, failure on the part of an employee without good reason and in a proper and timely manner to honor debts acknowledged by him to be valid or reduced to judgment by a court or to make or to adhere to satisfactory arrangements for the settlement thereof may be the cause for disciplinary action. In this connection each employee is expected to meet his responsibilities for payment of Federal, State, and local taxes.

§ 45.735-16 Misuse of Federal property.

No employees may use Federal property for other than officially approved activities. Each employee is responsible for protecting and conserving Federal property, including equipment and supplies.

§ 45.735-17 Gambling, betting, and lotteries.

No employee shall participate, while on Government property or while on duty for the Government, in the operation of gambling devices, in conducting an organized lottery or pool, in games for money or property, or in selling or purchasing numbers tickets.

§ 45.735-18 [Reserved]

§ 45.735-19 Partisan political activities.

(a) While certain political activities are prohibited by the criminal statutes of the United States (see 18 U.S.C. Chapter 29), the basic restrictions on political activity of employees are set forth in 5 U.S.C. 7321-7328.

(b) Most employees are subject to both statutory and Civil Service restrictions upon partisan political activities although employees of the Federal Government in some geographical areas may take part in certain local political activities. Employees have the right to vote as they choose and to express opinions on political subjects and candidates. Detailed information may be obtained through administrative and personnel offices.

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 383-67, 32 FR 13217, Sept. 19, 1967; Order No. 960-81, 46 FR 52358, Oct. 27, 1981]

§ 45.735-21 Miscellaneous statutory provisions.

Each employee should be aware of the following statutory prohibitions against:

(a) Lobbying with appropriated funds (18 U.S.C. 1913).

(b) Disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(c) Employment of a member of a Communist organization (50 U.S.C. 784).

(d) (1) Disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) disclosure of confidential information (18 U.S.C. 1905).

(e) Habitual use of intoxicants to excess (5 U.S.C. 7352).

(f) Misuse of a Government vehicle (31 U.S.C. 638a).

(g) Misuse of the franking privilege (18 U.S.C. 1719).

(h) Use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(i) Fraud or false statements in a Government matter (18 U.S.C. 1001).

(j) Multilating or destroying a public record (18 U.S.C. 2071).

(k) Counterfeiting and forging transportation requests (18 U.S.C. 508).

(l) (1) Embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(m) Unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(n) Acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(o) Engaging in violation of merit system principles (5 U.S.C. 2301).

(p) Engaging in prohibited personnel practices (5 U.S.C. 2302).

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 383-67, 32 FR 13217, Sept. 19, 1967; Order No. 960-81, 46 FR 52358, Oct. 27, 1981]

§ 45.735-22 Reporting of outside interests by persons other than special Government employees.

(a) Each employee occupying a position designated in paragraph (c) of this section, and who is not required to submit a financial disclosure report under § 45.735-27 of this title, shall submit to the head of his division a statement on a form made available through the appropriate division administrative office, setting forth the following information:

(1) A list of the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational or other institutions with or in which he, his spouse, minor child or other member of his immediate household has—

(i) Any connection as an employee, officer, owner, director, member, trustee, partner, adviser or consultant; or

(ii) Any continuing financial interest, through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association; or

(iii) Any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts, except those financial interests described in § 45.735-5(b).

(2) A list of the names of his creditors and the creditors of his spouse, minor child or other member of his immediate household, other than those creditors to whom any such person may be indebted by reason of a mortgage on property which he occupies as a personal residence or to whom such person may be indebted for current and ordinary household and living expenses such as those incurred for household furnishings, an automobile, education, vacations or the like.

(3) A list of his interests and those of his spouse, minor child or other member of his immediate household in real property or rights in lands, other than property which he occupies as a personal residence.

For the purpose of this section "member of his immediate household" means a resident of the employee's household who is related to him by blood.

(b) Each employee designated in paragraph (c) of this section who enters upon duty after the date of this order, and who is not required to submit a financial disclosure report under § 45.735-27 of this title, shall submit such statement not later than 30 days after the date of his entrance on duty or 90 days after the effective date of this order, whichever is later.

(c) Statements of employment and financial interest are required of the following employees:

(1) Office of the Attorney General:

Counsellor
Special Assistants
Special Counsels

(2) Office of the Deputy Attorney General:

Associate Deputy Attorneys General
Executive Assistant

(3) Office of the Associate Attorney General:

Deputy Associate Attorneys General
Special Assistants

(4) Office of the Solicitor General:

Tax Assistant

(5) Office of Legal Counsel:

Deputy Assistant Attorneys General

(6) Office of Legal Policy:

Deputy Assistant Attorneys General

(7) Office of Legislative Affairs:

Deputy Assistant Attorneys General
Chief, Legislative and Legal Section

(8) Justice Management Division:

Deputy Assistant Attorneys General
Staff Directors
Administrative Counsel

(9) Office of Professional Responsibility:

Counsel on Professional Responsibility
Deputy Counsel
Assistant Counsels

(10) Community Relations Service:

Deputy Director
Associate Director
Chief Counsel
Regional Directors

(11) Antitrust Division:

Deputy Assistant Attorney General
Director of Economic Policy Office
Director of Operations
Deputy Director of Operations
Director, Policy Planning Office
Section Chiefs
Field Office Chiefs

(12) Civil Division:

Deputy Assistant Attorney General
Section Chiefs

(13) Civil Rights Division:

Deputy Assistant Attorneys General
Special Assistants
Executive Officer
Section Chiefs
Director(s) of Offices

(14) Criminal Division:

Deputy Assistant Attorneys General
Section Chiefs

(15) Land and Natural Resources Division:

Deputy Assistant Attorneys General
Section Chiefs

(16) Tax Division:

Deputy Assistant Attorneys General
Section Chiefs

(17) Federal Bureau of Investigation:

Assistant Director, Administrative Services Division

(18) National Institute of Corrections (Bureau of Prisons):

Director, National Institute of Corrections
Employees classified at GS-13 or above who are in positions involving: (i) Contracting or procurement, or (ii) administering, auditing or monitoring grants and contracts

(19) Drug Enforcement Administration:

Assistant Administrators
Office Directors
Chief Counsel
Chief Inspector
Controller
Laboratory Directors
Regional Directors
Chief, Administrative Services Division
Contract and Procurement Officer
Contract Specialists, GS-13 and above
Chief, Compliance Division
Section Chiefs, Compliance Division
Project Officer, GS-13 and above

(20) Immigration and Naturalization Service:

Associate Commissioner, Management
Assistant Commissioner, Administration
Regional Commissioners
Deputy Regional Commissioners
Associate Deputy Regional Commissioners, Management

(21) Office of Justice Assistance, Research and Statistics:

Assistant Directors
Special Assistants to the Director and the Assistant Directors
General Counsel
Administrator, Law Enforcement Assistance Administration
Administrator, Office of Juvenile Justice and Delinquency Prevention
Director, National Institute of Justice
Director, Bureau of Justice Statistics
All Deputy Administrators of the above offices
Employees classified at GS-13 or above who are in positions involving: (i) Contracting or procurement, or (ii) administering, auditing or monitoring grants and contracts.

(22) United States Marshals Service:

Director
Deputy Director
United States Marshals

(d) Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflict-of-interest provisions set forth in this part.

(e) If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf.

(f) Paragraph (a) of this section does not require an employee to submit any information relating to his connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

(g) The Department shall hold each statement of employment and financial interests in confidence, and each statement shall be maintained in confidential files in the immediate office of the division head. Each division head shall designate which employees are authorized to review and retain the statements and shall limit such designation to those employees who are his immediate assistants. Employees so designated are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. The Department may not disclose information from a statement except as the Civil Service Commission or the Associate Attorney General may determine for good cause. Upon termination of the employment in the Department of any person subject to this section, statements which he has submitted in accordance with paragraph (a) of this section shall be disposed of in accordance with established Department procedures applicable to confidential records. In the event an employee subject to this section is transferred within the Department, statements which he has filed pursuant to paragraph (a) of this section shall be transferred to the head of the division to which the employee is reassigned.

(h) The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order or regulation. The submission of a statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

(i) Any employee who believes that his position has been improperly determined to be subject to the reporting requirements of § 45.735-22 may obtain review of such determination through the grievance procedure set forth in 28 CFR Part 46 [At 36 FR 12096, June 25, 1971, 28 CFR Part 46 was removed].

(28 U.S.C. 509, 510)

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 383-67, 32 FR 13217, Sept. 19, 1967; Order No. 412-69, 34 FR 5726, Mar. 27, 1969; Order No. 653-76, 41 FR 27317, July 2, 1976; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 732-77, 42 FR 35970, July 13, 1977; Order No. 899-80, 45 FR 43703, June 30, 1980; Order No. 960-81, 46 FR 52358, Oct. 27, 1981]

§ 45.735-23 Reporting of outside interests by special Government employees.

(a) A special Government employee shall submit to the head of his division a statement of employment and financial interests which reports: (1) All other employment, and (2) those financial interests which the head of his division determines are relevant in the light of the duties he is to perform.

(b) A statement required under this section shall be submitted at the time of employment and shall be kept current throughout the period of employment by the filing of supplementary statements in accordance with the requirements of § 45.735-22(d). Statements shall be on forms made available through division administrative officers.

(c) This section shall not be construed as requiring the submission of information referred to in § 45.735-22(f).

(d) Paragraphs (g) and (h) of § 45.735-22 shall be applicable with respect to statements required by this section.

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 383-67, 32 FR 13218, Sept. 19, 1967]

§ 45.735-24 Reviewing statements of financial interests.

(a) The head of each division shall review financial statements required of any of his subordinates by §§ 45.735-22 and 45.735-23 to determine whether there exists a conflict, or possibility of conflict, between the interests of a subordinate and the performance of his service for the Government. If the head of the division determines that such a conflict or possibility of conflict exists, he shall consult with the subordinate. If he concludes that remedial action should be taken, he shall refer the statement to the Associate Attorney General, through the Department Counselor, with his recommendation for such action. The Associate Attorney General, after such investigation as he deems necessary, shall direct appropriate remedial action if he deems it necessary.

(b) Remedial action may include, but is not limited to:

(1) Changes in assigned duties.

(2) Divestment by the employee of his conflicting interest.

(3) Disqualification for a particular action.

(4) Exemption pursuant to § 45.735-5.

(5) Disciplinary action.

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977]

§ 45.735-25 Supplemental regulations.

The heads of divisions may issue supplemental and implementing regulations not inconsistent with this part.

§ 45.735-26 Designated Agency Ethics Official.

(a) The Assistant Attorney General for Administration is the "designated agency ethics official (DAEO)" for this Department.

(b) In addition to the duties listed in 5 CFR 738.203, the DAEO shall provide for the regular distribution of conduct regulations to employees, and otherwise assist the Offices, Boards and Divisions in meeting their responsibilities under this part.

(c) The above responsibilities of the DAEO shall not be interpreted to diminish the primary responsibility of each Office, Board or Division to provide for the education and counseling of its own employees on matters of conduct and professional ethics.

[Order No. 960-81, 46 FR 52359, Oct. 27, 1981]

§ 45.735-27 Public financial disclosure requirements.

(a) *Persons required to file.* (1) Except as provided in paragraph (a)(2) of this section, the following persons must file a public financial disclosure report as required by Title II of the Ethics in Government Act of 1978:

(i) Each employee in the Department of Justice whose salary is fixed under Subchapter II of Chapter 53 of Title 5, United States Code (the Executive Schedule);

(ii) Each employee whose position is classified at GS-16 or above of the General Schedule prescribed by 5 U.S.C. 5332 or whose salary is required by law to be established at the minimum rate of basic pay for level GS-16 or above of the General Schedule;

(iii) Each United States Attorney;

(iv) Each Assistant United States Attorney occupying a supervisory position whose optimum pay level is established at the equivalent of the minimum rate of basic pay for GS-16 or above and who is actually compensated at a rate of pay equal to or greater than the minimum rate of basic pay for GS-16.

(v) Each employee appointed pursuant to section 3105 of Title 5, United States Code (Administrative Law Judges);

(vi) Each employee who is in a position which is excepted from the competitive service because it is of a confidential or policy-making character (Schedule C), as set forth in 5 CFR 213.3310 [1], and who has a role in advising or making policy determinations with respect to agency programs or policies. Schedule C employees having policy-making roles, such as Special Assistants to the head of a division, must file a report under this provision, but Schedule C employees who do not have a policy role, such as chauffeurs, private secretaries, and stenographers, need not;

(vii) Any other employee (other than an Assistant United States Attorney or an employee compensated under the General Schedule), including a special government employee, paid at a rate equal to or greater than the minimum rate of basic pay established for level GS-16 of the General Schedule; and

(viii) Any person nominated by the President to a position described in paragraphs (a)(1)(i) through (a)(1)(vii) of this section appointment to which requires the advice and consent of the Senate.

(2) An employee identified in paragraph (a)(1) of this section who is retained, designated, appointed or employed to perform services on all or part of 60 or fewer days in a calendar year is not required to file a public financial disclosure report. However, an employee who was initially expected to perform services on 60 or fewer days but who thereafter performs services on more than 60 days in a calendar year must immediately comply with the public disclosure requirements as if he had been covered by those requirements as of the date of his initial retention, designation, appointment, or employment.

(b) *Time of filing.* (1) Each employee described in paragraph (a) of this section must file a report: (i) Within 30 days of assuming his position, unless he has left another position in the Executive Branch covered by the public disclosure requirements; (ii) annually, on or before May 15, covering the preceding calendar year; and (iii) within 30 days of leaving his position, unless he accepts another position in the Executive Branch covered by the public disclosure requirements.

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[1] Section 213.3310 was superseded by a document published at 46 FR 20147, Apr. 3, 1981, revising Part 213 in its entirety.

(2) The reviewing official designated in paragraph (d) of this section may, for good cause, extend the deadline for filing reports identified in paragraph (a)(1) of this section for up to 20 days. The reviewing official may grant an extension of up to 15 additional days if the employee submits in writing reasons which establish good cause for an extension. Any further extension must be approved by the Director of the Office of Government Ethics.

(3) A person nominated to a position appointment to which requires the advice and consent of the Senate must file his report within 5 days of the transmittal of his nomination to the Senate by the President.

(4) The Assistant Attorney General for Administration and an employee in or nominee to a position appointment to which requires the advice and consent of the Senate shall furnish a copy of his report to the Director of the Office of Government Ethics at the time he files the original report with the appropriate reviewing official.

(c) *Approvals by Director of the Office of Government Ethics.* A publicly available waiver permitting the omission of information pertaining to certain gifts under section 202(a)(2) of the Act and the approval of blind trusts under section 202(f)(3)(D) of the Act may only be granted by the Director of the Office of Government Ethics.

(d) *Identification of reviewing officials.* (1) Reports filed by employees described in paragraph (a) of this section shall be filed with and reviewed by the following officials:

(i) The Associate Attorney General shall review reports filed by the Attorney General and any employee in the Office of the Attorney General;

(ii) The Attorney General shall review reports filed by the Deputy Attorney General, Associate Attorney General, Solicitor General, and Director of the Federal Bureau of Investigation;

(iii) Except as provided above, the Deputy Attorney General shall review reports filed by the head of each division under his supervision;

(iv) The Associate Attorney General shall review reports filed by the head of each division not included in paragraph (d)(1)(iii) of this section;

(v) The Director of the Executive Office for United States Attorneys shall review reports filed by United States Attorneys and Assistant United States Attorneys;

(vi) Except as provided above, the head of each division shall review reports filed by employees of that division.

(2) The function of reviewing reports under paragraphs (d)(1)(iii) through (d)(1)(vi) of this section may be delegated to an Associate Deputy Attorney General, Deputy Associate Attorney General, or deputy, associate, or assistant head of a division, as the case may be.

(3) The report filed by a person nominated to a position appointment to which requires the advice and consent of the Senate shall be filed with and reviewed by the official designated in paragraph (d)(1) of this section as having responsibility for reviewing reports filed by the incumbent in the position.

(4) Each reviewing official is responsible for ensuring that reports required to be filed with him are filed in a complete and timely manner.

(e) *Review procedure.* (1) Each reviewing official shall endeavor to review each report filed with him within 15 days of receiving it (and shall review the report within 60 days of receipt) to determine whether, on the basis of information contained in the report, the reporting individual is in compliance with applicable laws and regulations governing conflicts of interest and apparent conflicts of interest.

(2) If the reviewing official believes additional information is required to be submitted, he shall notify the individual and inform him of the date on which the additional information must be submitted.

(3) If, on the basis of information contained in the report, the reviewing official is of the opinion that the re-

porting individual is in compliance with applicable laws and regulations, he shall sign the report and forward it to the Assistant Attorney for Administration. The reviewing official shall retain a copy of the report.

(4) If, on the basis of information contained in the report, the reviewing official believes that the reporting individual is not in compliance with applicable laws and regulations, he shall notify the individual, state what remedial action he believes is appropriate, and afford the reporting individual a reasonable opportunity to submit an oral or written response.

(5) If, after considering the reporting individual's response, the reviewing official concludes that the reporting individual is not in compliance with applicable laws and regulations and that the reporting individual has not taken adequate measures to come into compliance, the reviewing official shall refer the matter to the Associate Attorney General (or if referral to the Associate Attorney General is inappropriate, to the Deputy Attorney General) with his recommendation regarding remedial action to be taken.

(6) After such investigation as he deems appropriate, the Associate Attorney General shall direct remedial action or refer the matter to the Attorney General, Deputy Attorney General, or Solicitor General for appropriate action, including possible referral to the President if the situation involves an employee in a position appointment to which requires the advice and consent of the Senate.

(7) Remedial action under this subsection may include, but is not limited to:

(i) Divestiture;

(ii) Restitution;

(iii) Establishment of a blind trust;

(iv) Request for exemption under 18 U.S.C. 208(b); or

(v) Disqualification, transfer, reassignment, limitation of duties, or discharge.

(8) When satisfactory measures have been taken to resolve any problems identified in the review process, the reviewing official or the official ordering remedial action shall sign the report with such notations and comments as may be appropriate.

(f) *Public availability of report.* (1) The Assistant Attorney General for Administration shall provide for the inspection of a report by, or the furnishing of a copy of a report to, any person upon request within 15 days after the report is filed with the appropriate reviewing official.

(2) If the Assistant Attorney General for Administration has not yet received the report, signed by the reviewing official, which a member of the public has requested to inspect or copy, the Assistant Attorney General for Administration shall request the reviewing official to ensure that the report is immediately made available for inspection or copying.

[Order No. 832-79, 44 FR 29891, May 23, 1979]

APPENDIX—CODE OF ETHICS FOR GOVERNMENT SERVICE

[H. Con. Res. No. 175, 85th Cong.]

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the following Code of Ethics should be adhered to by all Government employees, including officeholders:

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.

3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

9. Expose corruption whenever discovered.

10. Uphold these principles, ever conscious that public office is a public trust. Passed July 11, 1958.

APPENDIX—MEMORANDUM RE THE CONFLICT OF INTEREST PROVISIONS OF PUB. L. 87-849, 76 STAT. 1119, APPROVED OCTOBER 23, 1962

INTRODUCTION

Public Law 87-849, which came into force January 21, 1963, affected seven statutes which applied to officers and employees of the Government and were generally spoken of as the "conflict of interest" laws. These included six sections of the criminal code, 18 U.S.C. 216, 281, 283, 284, 434, and 1914, and a statute containing no penalties, section 190 of the Revised Statutes (5 U.S.C. 99). Pub. L. 87-849 (sometimes referred to hereinafter as "the Act") repealed section 190 and one of the criminal statutes, 18 U.S.C. 216, without replacing them.[1] In addition it repealed and supplanted the other five criminal statutes. It is the purpose of this memorandum to summarize the new law and to describe the principal differences between it and the legislation it has replaced.

The Act accomplished its revisions by enacting new sections 203, 205, 207, 208, and 209 of Title 18 of the United States Code and providing that they supplant the abovementioned sections 281, 283, 284, 434 and 1914 of Title 18 respectively.[2] It will be convenient, therefore, after summarizing the principal provisions of the new sections, to examine each section separately, comparing it with its precursor before passing to the next. First of all, however, it is necessary to describe the background and provisions of the new 18 U.S.C. 202(a), which has no counterpart among the statutes formerly in effect.

SPECIAL GOVERNMENT EMPLOYEES—NEW 18 U.S.C. 202(a)

In the main the prior conflict of interest laws imposed the same restrictions on individuals who serve the Government intermittently or for a short period of time as on those who serve full-time. The consequences of this generalized treatment were pointed out in the following paragraph of the Senate Judiciary Committee report on the bill which became Pub. L. 87-849:[3]

> In considering the application of present law in relation to the Government's utilization of temporary or intermittent consultants and advisers, it must be emphasized that most of the existing conflict-of-interest statutes were enacted in the 19th century—that is, at a time when persons outside the Government rarely served it in this way. The laws were therefore directed at activities of regular Government employees, and their present impact on the occasionally needed experts—those whose main work is performed outside the Government—is unduly severe. This harsh impact constitutes an appreciable deterrent to the Government's obtaining needed part-time services.

The recruiting problem noted by the Committee generated a major part of the impetus for the enactment of Pub. L. 87-849. The Act dealt with the problem by creating a category of Government employees termed "special Government employees" and by excepting persons in this category from certain of the prohibitions imposed on ordinary employees. The new 18 U.S.C. 202(a) defines the term "special Government employee" to include, among others, officers and employees of the departments and agencies who are appointed or employed to serve, with or without compensation, for not more than 130 days during any period of 365 consecutive days either on a full-time or intermittent basis.

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[1] Section 190 of the Revised Statutes (5 U.S.C. 99), which was repealed by section 3 of Pub. L. 87-849, applied to a former officer or employee of the Government who had served in a department of the executive branch. It prohibited him, for a period of two years after his employment had ceased, from representing anyone in the prosecution of a claim against the United States which was pending in that or any other executive department during his period of employment. The subject of postemployment activities of former Government officers and employees was also dealt with in another statute which was repealed, 18 U.S.C. 284. Pub. L. 87-849 covers the subject in a single section enacted as the new 18 U.S.C. 207.

18 U.S.C. 216, which was repealed by section 1(c) of Pub. L. 87-849, prohibited the payment to or acceptance by a Member of Congress or officer or employee of the Government of any money or thing of value for giving or procuring a Government contract. Since this offense is within the scope of the newly enacted 18 U.S.C. 201 and 18 U.S.C. 203, relating to bribery and conflicts of interest, respectively, section 216 is no longer necessary.

[2] See section 2 of Pub. L. 87-849. 18 U.S.C. 281 and 18 U.S.C. 283 were not completely set aside by section 2 but remain in effect to the extent that they apply to retired officers of the Armed Forces (see "Retired Officers of the Armed Forces," *infra*).

[3] S. Rept. 2213, 87th Cong., 2d sess., p. 6.

SUMMARY OF THE MAIN CONFLICT OF INTEREST PROVISIONS OF PUB. L. 87-849

A regular officer or employee of the Government—that is, one appointed or employed to serve more than 130 days in any period of 365 days—is in general subject to the following major prohibitions (the citations are to the new sections of Title 18):

1. He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (18 U.S.C. 203 and 205).

2. He may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment has a financial interest (18 U.S.C 208).

3. He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

4. He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility[4] during the last year of his Government service (18 U.S.C. 207(b)). This temporary restraint of course gives way to the permanent restraint described in paragraph 3 if the matter is one in which he participated personally and substantially.

5. He may not receive any salary, or supplementation of his Government salary, from a private source as compensation for his services to the Government (18 U.S.C. 209).

A special Government employee is in general subject only to the following major prohibitions:

1. (a) He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest and in which he has at any time participated personally and substantially for the Government (18 U.S.C. 203 and 205).

(b) He may not, except in the discharge of his official duties, represent anyone else in a matter pending before the agency he serves unless he has served there no more than 60 days during the past 365 (18 U.S.C. 203 and 205). He is bound by this restraint despite the fact that the matter is not one in which he has ever participated personally and substantially.

The restrictions described in subparagraphs (a) and (b) apply to both paid and unpaid representation of another. These restrictions in combination are, of course, less extensive than the one described in the corresponding paragraph 1 in the list set forth above with regard to regular employees.

2. He may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment has a financial interest (18 U.S.C. 208).

3. He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

4. He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his Government Service (18 U.S.C. 207(b)). This temporary restraint of course gives way to the permanent restriction described in paragraph 3 if the matter is one in which he participated personally and substantially.

It will be seen that paragraphs 2, 3 and 4 for special Government employees are the same as the corresponding paragraphs for for regular employees. Paragraph 5 for the latter, describing the bar against the receipt of salary for Government work from a private source does not apply to special Government employees.

As it appears below, there are a number of exceptions to the prohibitions summarized in the two lists.

COMPARISON OF OLD AND NEW CONFLICT OF INTEREST SECTIONS OF TITLE 18, UNITED STATES CODE

New 18 U.S.C. 203. Subsection (a) of this section in general prohibits a Member of Congress and an officer or employee of the United States in any branch or agency of the Government from soliciting or receiving compensation for services rendered on behalf of another person before a Government department or agency in relation to any particular matter in which the United States is a party or has a direct and substantial interest. The subsection does not preclude compensation for services rendered on behalf of another in court.

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[4] The term "official responsibility" is defined by the new 18 U.S.C. 202(b) to mean "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action."

Subsection (a) is essentially a rewrite of the repealed portion of 18 U.S.C. 281. However, subsections (b) and (c) have no counterparts in the previous statutes.

Subsection (b) makes it unlawful for anyone to offer or pay compensation the solicitation or receipt of which is barred by subsection (a).

Subsection (c) narrows the application of subsection (a) in the case of a person serving as a special Government employee to two, and only two, situations. First, subsection (c) bars him from rendering services before the Government on behalf of others, for compensation, in relation to a matter involving a specific party or parties in which he has participated personally and substantially in the course of his Government duties. And second, it bars him from such activities in relation to a matter involving a specific party or parties, even though he has not participated in the matter personally and substantially, if it is pending in his department or agency and he has served therein more than 60 days in the immediately preceding period of a year.

New 18 U.S.C. 205. This section contains two major prohibitions. The first prevents an officer or employee of the United States in any branch or agency of the Government from acting as agent or attorney for prosecuting any claim against the United States, including a claim in court, whether for compensation or not. It also prevents him from receiving a gratuity, or a share or interest in any such claim, for assistance in the prosecution thereof. This portion of section 205 is similar to the repealed portion of 18 U.S.C. 283, which dealt only with claims against the United States, but it omits a bar contained in the latter—i.e., a bar against rendering uncompensated aid or assistance in the prosecution or support of a claim against the United States.

The second main prohibition of section 205 is concerned with more than claims. It precludes an officer or employee of the Government from acting as agent or attorney for anyone else before a department, agency or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest.

Section 205 provides for the same limited application to a special Government employee as section 203. In short, it precludes him from acting as agent or attorney only (1) in a matter involving a specific party or parties in which he has participated personally and substantially in his governmental capacity, and (2) in a matter involving a specific party or parties which is before his department or agency, if he has served therein more than 60 days in the year past.

Since new sections 203 and 205 extend to activities in the same range of matters, they overlap to a greater extent than did their predecessor sections 281 and 283. The following are the few important differences between sections 203 and 205:

1. Section 203 applies to Members of Congress as well as officers and employees of the Government; section 205 applies only to the latter.

2. Section 203 bars services rendered for compensation solicited or received, but not those rendered without such compensation; section 205 bars both kinds of services.

3. Section 203 bars services rendered before the departments and agencies but not services rendered in court; section 205 bars both.

It will be seen that while section 203 is controlling as to Members of Congress, for all practical purposes section 205 completely overshadows section 203 in respect of officers and employees of the Government.

Section 205 permits a Government officer or employee to represent another person, without compenation, in a disciplinary, loyalty or other personnel matter. Another provision declares that the section does not prevent an officer or employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.[5]

Section 205 also authorizes a limited waiver of its restrictions and those of section 203 for the benefit of an officer or employee, including a special Government employee, who represents his own parents, spouse or child, or person or estate he serves as a fiduciary. The waiver is available to the officer or employee, whether acting for any such person with or without compensation, but only if approved by the official making appointments to his portion. And in no event does the waiver extend to his representation of any such person in matters in which he has participated personally and substantially or which, even in the absence of such participation, are the subject of his official responsibility.

Finally, section 205 gives the head of a department or agency the power, notwithstanding any applicable restrictions in its provisions or those of section 203, to allow a special Government emloyee to represent his regular employer or other outside organization in the performance of work under a Government grant or contract. However, this action is open to the department or agency head only upon his certification, published in the FEDERAL REGISTER, that the national interest requires it.

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[5] These two provisions of section 205 refer to an "officer or employee" and not, as do certain of the other provisions of the Act, to an "officer or employee, including a special Government employee." However, it is plain from the definition in section 202(a) that a special Government employee is embraced within the comprehensive term "officer or employee." There would seem to be little doubt, therefore, that the instance provisions of section 205 apply to special Government employees even in the absence of an explicit reference to them.

New 18 U.S.C. 207. Subsections (a) and (b) of this section contain postemployment prohibitions applicable to persons who have ended service as officers or employees of the executive branch, the independent agencies or the District of Columbia.[6] The prohibitions for persons who have served as special Government employees are the same as for persons who have performed regular duties.

The restraint of subsection (a) is against a former officer or employee's acting as agent or attorney for anyone other than the United States in connection with certain matters, whether pending in the courts or elsewhere. The matters are those involving a specific party or parties in which the United States is one of the parties or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while holding a Government position.

Subsection (b) sets forth a 1-year postemployment prohibition in respect of those matters which were within the area of official responsibility of a former officer or employee at any time during the last year of his service but which do not come within subsection (a) because he did not participate in them personally and substantially. More particularly, the prohibition of subsection (b) prevents his personal appearance in such matters before a court or a department or agency of the Government as agent or attorney for anyone other than the United States.[7] Where, in the year prior to the end of his service, a former officer or employee has changed areas of responsibility by transferring from one agency to another, the period of his postemployment ineligibility as to matters in a particular area ends 1 year after his responsibility for that area ends. For example, if an individual transfers from a supervisory position in the Internal Revenue Service to a supervisory position in the Post Office Department and leaves that department for private employment 9 months later, he will be free of the restriction of subsection (b) in 3 months insofar as Internal Revenue matters are concerned. He will of course be bound by it for a year in respect of Post Office Department matters.

The proviso following subsections (a) and (b) authorizes an agency head, notwithstanding anything to the contrary in their provisions, to permit a former officer or employee with outstanding scientific qualifications to act as attorney or agent or appear personally before the agency for another in a matter in a scientific field. This authority may be exercised by the agency head upon a "national interest" certification published in the FEDERAL REGISTER.

Subsections (a) and (b) describe the activities they forbid as being in connection with "particular matter[s] involving a specific party or parties" in which the former officer or employee had participated. The quoted language does not include general rulemaking, the formulation of general policy or standards, or other similar matters. Thus, past participation in or official responsibility for a matter of this kind on behalf of the Government does not disqualify a former employee from representing another person in a proceeding which is governed by the rule or other result of such matter.

Subsection (a) bars permanently a greater variety of actions than subsection (b) bars temporarily. The conduct made unlawful by the former is *any action as agent or attorney*, while that made unlawful by the latter is a *personal appearance as agent or attorney*. However, neither subsection precludes postemployment activities which may fairly be characterized as no more than aiding or assisting another.[8] An individual who has

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[6] The prohibitions of the two subsections apply to persons ending service in these areas whether they leave the Government entirely or move to the legislative or judicial branch. As a practical matter, however, the prohibitions would rarely be significant in the latter situation because officers and employees of the legislative and judicial branches are covered by sections 203 and 205.

[7] Neither section 203 nor section 205 prevents a special Government employee, during his period of affiliation with the Government, from representing another person before the Government in a particular matter only because it is within his official responsibility. Therefore the inclusion of a *former* special Government employee within the 1-year postemployment ban of subsection (b) may subject him to a temporary restraint from which he was free prior to the end of his Government service. However, since special Government employees usually do not have "official responsibility," as that term is defined in section 202(b), their inclusion within the 1-year ban will not have a widespread effect.

[8] Subsection (a), as it first appeared in H.R. 8140, the bill which became Pub. L. 87-49, made it unlawful for a former officer or employee to act as agent or attorney for, *or*

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left an agency to accept private employment may, for example, immediately perform technical work in his company's plant in relation to a contract for which he had official responsibility—or, for that matter, in relation to one he helped the agency negotiate. On the other hand, he is forbidden for a year, in the first case to appear personally before the agency as the agent or attorney of his company in connection with a dispute over the terms of the contract. And he may at no time appear personally before the agency or otherwise act as agent or attorney for his company in such dispute if he helped negotiate the contract.

Comparing subsection (a) with the antecedent 18 U.S.C. 284 discloses that it follows the latter in limiting disqualification to cases where a former officer or employee actually participated in a matter for the Government. However, subsection (a) covers all matters in which the United States is a party or has a direct and substantial interest and not merely the "claims against the United States" covered by 18 U.S.C. 284. Subsection (a) also goes further than the latter in imposing a lifetime instead of a 2-year bar. Subsection (b) has no parallel in 18 U.S.C. 284 or any other provision of the former conflict in interest statutes.

It will be seen that subsections (a) and (b) in combination are less restrictive in some respects, and more restrictive in others, than the combination of the prior 18 U.S.C. 284 and 5 U.S.C. 99. Thus, former officers or employees who were outside the Government when the Act came into force on January 21, 1963, will in certain situations be enabled to carry on activities before the Government which were previously barred. For example the repeal of 5 U.S.C. 99 permits an attorney who left an executive department for private practice a year before to take certain cases against the Government immediately which would be subject to the bar of 5 U.S.C. 99 for another year. On the other hand, former officers or employees became precluded on and after January 21, 1963, from engaging or continuing to engage in certain activities which were permissible until that date. This result follows from the replacement of the 2-year bar of 18 U.S.C. 284 with the lifetime bar of subsection (a) in comparable situations, from the increase in the variety of matters covered by subsection (a) as compared with 18 U.S.C. 284 and from the introduction of the 1-year bar of subsection (b).

Subsection (c) of section 207 pertains to an individual outside the Government who is in a business or professional partnership with someone serving in the executive branch, an independent agency or the District of Columbia. The subsection prevents such individual from acting as attorney or agent for anyone other than the United States in any matters, including those in court, in which his partner in the Government is participating or has participated or which are the subject of his partner's official responsibility. Although included in a section dealing largely with postemployment activities, this provision is not directed to the postemployment situation.

The paragraph at the end of section 207 also pertains to individuals in a partnership but sets forth no prohibition. This paragraph, which is of importance mainly to lawyers in private practice, rules out the possibility that an individual will be deemed subject to section 203, 205, 207(a) or 207(b) solely because he has a partner who serves or has served in the Government either as a regular or a special Government employee.

New 18 U.S.C. 208. This section forbids certain actions by an officer or employee of the Government in his role as a servant or representative of the Government. Its thrust is therefore to be distinguished from that of sections 203 and 205 which forbid certain actions in his capacity as a representative of persons outside the Government.

Subsection (a) in substance requires an officer or employee of the executive branch, an independent agency or the District of Columbia, including a special Government employee, to refrain from participating as such in any matter in which, to his knowledge, he, his spouse, minor child or partner has a financial interest. He must also remove himself from a matter in which a business or nonprofit organization with which he is connected or is seeking employment has a financial interest.

Subsection (b) permits the agency of an officer or employee to grant him an *ad hoc* exemption from subsection (a) if the outside financial interest in a matter is deemed not substantial enough to have an effect on the integrity of his services. Financial interests of this kind may also be made nondisqualifying by a general regulation published in the FEDERAL REGISTER.

Section 208 is similar in purpose to the former 18 U.S.C. 434 but prohibits a greater variety of conduct than the "transaction of business with * * * [a] business entity" to which the prohibition of section 434 was limited. In addition, the provision in section 208 including the interests of a spouse and

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aid or assist, anyone in a matter in which he had participated. The House Judiciary Committee struck the underlined words, and the bill became law without them. It should be noted also that the repealed provisions of 18 U.S.C. 283 made the distinction between one's acting as agent or attorney for another and his aiding or assisting another.

others is new, is in the provisions authorizing exemptions for insignificant interests.

New 18 U.S.C. 209. Subsection (a) prevents an officer or employee of the executive branch, an independent agency or the District of Columbia from receiving, and anyone from paying him, any salary or supplementation of salary from a private source as compensation for his services to the Government. This provision uses much of the language of the former 18 U.S.C. 1914 and does not vary from that statute in substance. The remainder of section 209 is new.

Subsection (b) specifically authorizes an officer or employee covered by subsection (a) to continue his participation in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer.

Subsection (c) provides that section 209 does not apply to a special Government employee or to anyone serving the Government without compensation, whether or not he is a special Government employee.

Subsection (d) provides that the section does not prohibit the payment or acceptance of contributions, awards or other expenses under the terms of the Government Employees Training Act (72 Stat. 327, 5 U.S.C. 2301-2319).

STATUTORY EXEMPTIONS FROM CONFLICT OF INTEREST LAWS

Congress has in the past enacted statutes exempting persons in certain positions—usually advisory in nature—from the provisions of some or all of the former conflict of interest laws. Section 2 of the Act grants corresponding exemptions from the new laws with respect to legislative and judicial positions carrying such past exemptions. However, section 2 excludes positions in the executive branch, an independent agency and the District of Columbia from this grant. As a consequence, all statutory exemptions for persons serving in these sectors of the Government ended on January 21, 1963.

RETIRED OFFICERS OF THE ARMED FORCES

Public Law 87-849 enacted a new 18 U.S.C. 206 which provides in general that the new sections 203 and 205, replacing 18 U.S.C. 281 and 283, do not apply to retired officers of the armed forces and other uniformed services. However, 18 U.S.C. 281 and 283 contain special restrictions applicable to retired officers of the armed forces which are left in force by the partial repealer of those statutes set forth in section 2 of the Act.

The former 18 U.S.C. 284, which contained a 2-year disqualification against postemployment activities in connection with claims against the United States, applied by its terms to persons who had served as commissioned officers and whose active service had ceased either by reason of retirement or complete separation. Its replacement, the broader 18 U.S.C. 207, also applies to persons in those circumstances. Section 207, therefore applies to retired officers of the armed forces and overlaps the continuing provisions of 18 U.S.C. 281 and 283 applicable to such officers although to a different extent than did 18 U.S.C. 284.

VOIDING TRANSACTIONS IN VIOLATION OF THE CONFLICT OF INTERESTS OR BRIBERY LAWS

Public Law 87-849 enacted a new section, 18 U.S.C. 218, which did not supplant a preexisting section of the criminal code. However, it was modeled on the last sentence of the former 18 U.S.C. 216 authorizing the President to declare a Government contract void which was entered into in violation of that section. It will be recalled that section 216 was one of the two statutes repealed without replacement.

The new 18 U.S.C. 218 grants the President and under presidential regulations, an agency head the power to void and rescind any transactio[illegible]r matter in relation to which there h[illegible]een a "final conviction" for a violation of the conflict of interest or bribery laws. The section also authorizes the Government's recovery, in addition to any penalty prescribed by law or in a contract, of the amount expended or thing transferred on behalf of the Government.

Section 218 specifically provides that the powers its grants are "in addition to any other remedies provided by law." Accordingly, it would not seem to override the decision in *United States* v. *Mississippi Valley Generating Co.*, 364 U.S. 520 (1961), a case in which there was no "final conviction."

BIBLIOGRAPHY

Set forth below are the citations to the legislative history of Public Law 87-849 and a list of recent material which is pertinent to a study of the Act. The listed 1960 report of the Association of the Bar of the City of New York is particularly valuable. For a comprehensive bibliography of earlier material relating to the conflict of interest laws, see 13 Record of the Association of the Bar of the City of New York 323 (May 1958).

LEGISLATIVE HISTORY OF PUB. L. 87-849 (H.R. 8140, 87TH CONG.)

1. Hearings of June 1 and 2, 1961, before the Antitrust Subcommittee (Subcommittee No. 5) of the House Judiciary Committee, 87th Cong., 1st sess., ser. 3, on *Federal Conflict of Interest Legislation.*
2. H. Rept. 748, 87th Cong., 1st sess.
3. 107 Cong. Rec. 14774.
4. Hearing of June 21, 1962, before the Senate Judiciary Committee, 87th Cong., 2d sess., on *Conflict of Interest.*
5. S. Rept. 2213, 87th Cong., 2d sess.

6. 108 Cong. Rec. 20805 and 21130 (daily ed., October 3 and 4, 1962).

OTHER MATERIAL

1. President's special message to Congress, April 27, 1961, and attached draft bill, 107 Cong. Rec. 6835.

2. President's Memorandum of February 9, 1962, to the heads of executive departments and agencies entitled *Preventing Conflicts of Interest on the Part of Advisers and Consultants to the Government*, 27 FR 1341.

3. 42 Op. A.G. No. 6, January 31, 1962.

4. Memorandum of December 10, 1956, for the Attorney General from the Office of Legal Counsel re conflict of interest statutes, Hearings before the Antitrust Subcommittee (Subcommittee No. 5) of House Judiciary Committee, 86th Cong., 2d sess., ser. 17, pt. 2, p. 619.

5. Staff report of Antitrust Subcommittee (Subcommittee No. 5) of House Judiciary Committee, 85th Cong., 2d sess., *Federal Conflict of Interest Legislation* (Comm. Print 1958).

6. Report of the Association of the Bar of the City of New York, *Conflict of Interest and Federal Service* (Harvard Univ. Press 1960).

[28 FR 985, Feb. 1, 1963]

PART 47—RIGHT TO FINANCIAL PRIVACY ACT

Sec.
47.1 Definitions.
47.2 Purpose.
47.3 Authorization.
47.4 Written request.
47.5 Certification.

AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509, 510; section 1108 of the Right to Financial Privacy Act of 1978, 12 U.S.C. 3408.

SOURCE: Order No. 822-79, 44 FR 14554, Mar. 13, 1979, unless otherwise noted.

§ 47.1 Definitions.

The terms used in this part shall have the same meaning as similar terms used in the Right to Financial Privacy Act of 1978. "Departmental unit" means any office, division, board, bureau, or other component of the Department of Justice which is authorized to conduct law enforcement inquiries. "Act" means the Right to Financial Privacy Act of 1978.

§ 47.2 Purpose.

The purpose of these regulations is to authorize Departmental units to request financial records from a financial institution pursuant to the formal written request procedure authorized by section 1108 of the Act, and to set forth the conditions under which such requests may be made.

§ 47.3 Authorization.

Departmental units are authorized to request financial records of any customer from a financial institution pursuant to a formal written request under the Act only if:

(a) No administrative summons or subpoena authority reasonably appears to be available to the Departmental unit to obtain financial records for the purpose for which the records are sought;

(b) There is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry and will further that inquiry;

(c) The request is issued by a supervisory official of a rank designated by the head of the requesting Departmental unit. The officials so designated shall not delegate this authority to others;

(d) The request adheres to the requirements set forth in § 47.4; and

(e) The notice requirements set forth in section 1108(4) of the Act, or the requirements pertaining to delay of notice in section 1109 of the Act, are satisfied, except in situations (e.g., section 1113(g)) where no notice is required.

§ 47.4 Written request.

(a) The formal written request shall be in the form of a letter or memorandum to an appropriate official of the financial institution from which financial records are requested. The request shall be signed by the issuing official, and shall set forth that official's name, title, business address and business phone number. The request shall also contain the following:

(1) The identity of the customer or customers to whom the records pertain;

(2) A reasonable description of the records sought; and

(3) Such additional information as may be appropriate—e.g., the date on which the opportunity for the custom-

er to challenge the formal written request will expire, the date on which the requesting Departmental unit expects to present a certificate of compliance with the applicable provisions of the Act, the name and title of the individual (if known) to whom disclosure is to be made.

(b) In cases where customer notice is delayed by court order, a copy of the court order shall be attached to the formal written request.

§ 47.5 Certification.

Prior to obtaining the requested records pursuant to a formal written request, an official of a rank designated by the head of the requesting Departmental unit shall certify in writing to the financial institution that the Departmental unit has complied with the applicable provisions of the Act.

PART 48—NEWSPAPER PRESERVATION ACT

Sec.

48.1 Purpose.
48.2 Definitions.
48.3 Procedure for filing all documents.
48.4 Application for approval of joint newspaper operating arrangement entered into after July 24, 1970.
48.5 Requests that information not be made public.
48.6 Public notice.
48.7 Report of the Assistant Attorney General in Charge of the Antitrust Division.
48.8 Written comments and requests for a hearing.
48.9 Extensions of time.
48.10 Hearings.
48.11 Intervention in hearings.
48.12 Ex parte communications.
48.13 Record for decision.
48.14 Decision by the Attorney General.
48.15 Temporary approval.
48.16 Procedure for filing of terms of a renewal or amendment to an existing joint newspaper operating arrangement.

AUTHORITY: 28 U.S.C. 509, 510; (5 U.S.C. 301); Newspaper Preservation Act, 84 Stat. 466 (15 U.S.C. 1801 et seq.).

SOURCE: Order No. 558-73, 39 FR 7, Jan. 2, 1974, unless otherwise noted.

§ 48.1 Purpose.

These regulations set forth the procedure by which application may be made to the Attorney General for his approval of joint newspaper operating arrangements entered into after July 24, 1970, and for the filing with the Department of Justice of the terms of a renewal or amendment of existing joint newspaper operating arrangements, as required by the Newspaper Preservation Act, Pub. L. 91-353, 84 Stat. 466, 15 U.S.C. 1801 et seq. The Newspaper Preservation Act does not require that all joint newspaper operating arrangements obtain the prior written consent of the Attorney General. The Act and these regulations provide a method for newspapers to obtain the benefit of a limited exemption from the antitrust laws if they desire to do so. Joint newspaper operating arrangements that are put into effect without the prior written consent of the Attorney General remain fully subject to the antitrust laws.

§ 48.2 Definitions.

(a) The term "Attorney General" means the Attorney General of the United States or his delegate, other than the Assistant Attorney General in charge of the Antitrust Division or other employee in the Antitrust Division.

(b) The term "Assistant Attorney General in charge of the Antitrust Division" means the Assistant Attorney General in charge of the Antitrust Division or his delegate.

(c) The term "Assistant Attorney General for Administration" means the Assistant Attorney General for Administration or his delegate.

(d) The term "existing arrangement" means any joint newspaper operating arrangement entered into before July 24, 1970.

(e) The term "joint newspaper operating arrangement" means any contract, agreement, joint venture (whether or not incorporated), or other arrangement entered into between two or more newspaper owners for the publication of two or more newspaper publications, pursuant to which joint or common production facilities are established or operated and joint or unified action is taken or agreed to be taken with respect to any of the following: Printing; time, method, and field of publication; allocation of production facilities; distribution; advertising solicitation; circulation solicitation; business department; establishment of advertising rates; establishment of circulation rates and revenue distribution: *Provided*, That there is no merger, combination, or amalgamation of editorial or reportorial staffs, and that editorial policies be independently determined.

(f) The term "newspaper" means a publication produced on newsprint paper which is published in one or more issues weekly (including as one publication any daily newspaper and any Sunday newspaper published by the same owner in the same city, community, or metropolitan area), and in which a substantial portion of the content is devoted to the dissemination of news and editorial opinion.

(g) The term "party" means any individual, and any partnership, corporation, association, or other legal entity.

(h) The term "person" means any individual, and any partnership, corporation, association, or other legal entity.

§ 48.3 Procedure for filing all documents.

All filings required by these regulations shall be accomplished by:

(a) Mailing or delivering five copies of each document (two copies in the case of documents filed by the Assistant Attorney General in charge of the Antitrust Division) to the Assistant Attorney General for Administration, Department of Justice, Washington, D.C. 20530. He shall place one copy in a numbered public docket; one copy in a duplicate of this file for the use of officials with decisional responsibility; and (except in the case of documents filed by the Assistant Attorney General in charge of the Antitrust Division) shall forward three copies to the Assistant Attorney General in charge of the Antitrust Division; except that documents subject to nondisclosure orders under § 48.5 shall be held under seal and disclosed only in accordance with the provisions of that section; and

(b) Mailing or delivering one copy of each document filed after a hearing has been ordered to each party to the proceedings, along with the name and address of the party filing the document or its counsel, and filing in the manner provided in paragraph (a) of this section a certificate that service has been made in accordance herewith.

§ 48.4 Application for approval of joint newspaper operating arrangement entered into after July 24, 1970.

(a) Persons desiring to obtain the approval of the Attorney General of a joint newspaper operating arrangement after July 24, 1970, shall file an application in writing setting forth a short, plain statement of the reasons why the applicants believe that approval should be granted.

(b) With the request, the applicants shall also file copies of the following:

(1) The proposed joint newspaper operating agreement;

(2) Any prior, existing or proposed agreement between any of the newspapers involved, or a statement of any such agreements as have not been reduced to writing;

(3) With respect to each newspaper, for the 5-year period prior to the date of the application,

(i) Annual statements of profit and loss;

(ii) Annual statements of assets and liabilities;

(iii) Reports of the Audit Bureau of Circulation, or statements containing equivalent information;

(iv) Annual advertising lineage records;

(v) Rate cards;

(4) If any amount stated in paragraph (b)(3)(i) or (ii) of this section represents an allocation of revenues, expenses, assets or liabilities between the newspaper and any parent, subsidiary, division or affiliate, the financial statements shall be accompanied by a full explanation of the method by which each such amount has been allocated.

(5) If any of the newspapers involved purchased or sold goods or services from or to any parent, subsidiary, division or affiliate at any time during the five years preceding the date of application, a statement shall be submitted identifying such products or services, the entity from which they were purchased or to which they were sold, and

the amount paid for each product or service during each of the five years.

(6) Any other information which the applicants believe relevant to their request for approval.

(c) A copy of the application and supporting data shall be open to public inspection during normal business hours at the main office of each of the newspapers involved in the arrangement, except to the extent permitted by nondisclosure orders under § 48.5; except that materials for which nondisclosure has been requested under § 48.5 need not be made available for inspection before the request has been decided.

§ 48.5 Requests that information not be made public.

(a) Any applicant may file a request that commercial or financial data required to be filed and made public under these regulations, which is privileged and confidential within the meaning of 5 U.S.C. 552(b), be withheld from public disclosure. Each such request shall be accompanied by a statement of the reasons why nondisclosure is required. The request shall be determined by the Attorney General who shall consider the extent to which (1) disclosure may cause substantial harm to the applicant submitting the information, and (2) nondisclosure may impair the ability of persons who may be adversely affected by the proposed arrangement to present their views in proceedings under these regulations. Information relevant to the financial conditions of the newspaper or newspapers represented to be failing ordinarily shall not be ordered withheld from public disclosure.

(b) Upon ordering that any documents be withheld from public disclosure, the Attorney General shall file a statement setting forth the subject matter of the documents withheld. Any person desiring to inspect the documents may file a request for inspection, identifying with as much particularity as possible the materials to be inspected and setting forth the reasons for inspection and the facts in support thereof. The request for disclosure shall be considered by the Attorney General, who shall give the applicant that submitted the documents an opportunity to be heard in opposition to disclosure. Orders granting inspection shall specify the terms and conditions thereof, including restrictions on disclosure to third parties.

(c) Documents ordered withheld from public disclosure shall be made available to the Assistant Attorney General in charge of the Antitrust Division. If a hearing is held, the documents may be offered as evidence by any party to whom they have been disclosed. The administrative law judge may restrict further disclosure as he deems appropriate, taking into account the considerations set forth in paragraph (a) of this section.

(d) Requests for access to materials within the scope of this section that may be filed after the conclusion of proceedings under these regulations shall be processed in accordance with the Department's regulations under 5 U.S.C. 552 (Part 16 of this chapter).

§ 48.6 Public notice.

(a) Upon the filing of the documents required by § 48.4, the applicants shall file, and publish on the front pages of each of the newspapers for which application is made, daily and Sunday (if a Sunday edition is published) for a period of one week:

(1) Notice that a request for approval of a joint newspaper operating arrangement has been filed with the Attorney General;

(2) Notice that copies of the proposed arrangement, as well as all other documents submitted pursuant to § 48.4, are available for public inspection at the Department of Justice and at the main offices of the newspapers involved; and

(3) Notice that any person may file written comments or a request for a hearing with the Department of Justice, in accordance with the requirements of § 48.3.

(b) Upon the filing of the notice required in paragraph (a) of this section, the Assistant Attorney General for Administration shall cause notice to be published in the FEDERAL REGISTER, and shall cause to be issued a press release setting forth the information contained therein.

(c) If a hearing is scheduled pursuant to § 48.10, the applicants shall publish the time, date, place and purpose of such hearing on their respective front pages at least three times within the 2-week period after the hearing has been scheduled (two times if the applicants are weekly newspapers), and for the 3 days preceding such hearing (one day during the week preceding the hearing if the applicants are weekly newspapers).

(d) The applicants shall file copies of each day's newspaper in which the notice required in paragraph (a) or (c) of this section has appeared.

§ 48.7 Report of the Assistant Attorney General in Charge of the Antitrust Division.

(a) The Assistant Attorney General in charge of the Antitrust Division shall, not later than 30 days from the publication in the Federal Register of the notice required by § 48.6, submit to the Attorney General a report on any application filed pursuant to § 48.4. In preparing such report he may require submission by the applicants of any further information which may be relevant to a determination of whether approval of the proposed arrangement is warranted under the Act.

(b) In his report he may state (1) that the proposed arrangement should be approved or disapproved without a hearing; or (2) that a hearing should be held to resolve material issues of fact.

(c) The report shall be filed, and a copy shall be sent to the applicants. Upon the filing of the report, the Assistant Attorney General for Administration shall cause to be issued a press release setting forth the substance thereof.

(d) Any person may, within 30 days after filing of the report, file a reply to the report for the consideration of the Attorney General.

§ 48.8 Written comments and requests for a hearing.

(a) Any person who believes that the Attorney General should or should not approve a proposed arrangement, may at any time after filing of the application until 30 days after publication in the Federal Register of the notice required in § 48.6,

(1) File written comments stating the reasons why approval should or should not be granted, and/or

(2) File a request that a hearing be held on the application. A request for a hearing shall set forth the issues of fact to be determined and the reasons that a hearing is required to determine them.

(b) Any person may within 30 days after the filing of any comment or request pursuant to paragraph (a) of this section, file a reply for the consideration of the Attorney General.

(c) After the expiration of the time for filing of replies in accordance with §§ 48.7 and 48.8 the Attorney General shall either approve or deny approval of the arrangement, in accordance with § 48.14, or shall order that a hearing be held.

§ 48.9 Extensions of time.

Any of the time periods established by these Regulations may be extended for good cause, upon timely application to the Attorney General, or to the administrative law judge if one has been appointed.

§ 48.10 Hearings.

(a) Upon the issuance by the Attorney General of an order for a hearing, the Assistant Attorney General for Administration shall appoint an administrative law judge in accordance with section 11 of the Administrative Procedure Act, 5 U.S.C. 3105. The administrative law judge shall:

(1) Set a date, time and place for the hearing convenient for all parties involved. The date set shall be as soon as practicable, allowing time for publication of the notice required in § 48.6 and for a reasonable period of discovery as provided in this section. In setting a place for the hearing, preference shall be given to the community in which the applicants' newspapers operate.

(2) Mail notice of the hearing to the parties, to each person who filed written comments or a request for a hearing, and to any other person he believes may have an interest in the proceeding.

(3) Permit discovery by any party, as provided in the Federal Rules of Civil Procedure; except that he may place such limits as he deems reasonable on the time and manner of taking discovery in order to avoid unnecessary delays in the proceedings.

(4) Conduct a hearing in accordance with section 7 of the Administrative Procedure Act, 5 U.S.C. 556. At such hearing, the burden of proving that the proposed arrangement meets the requirements of the Newspaper Preservation Act will be on the proponents of the arrangement. The rules of evidence which govern civil proceedings in matters not involving trial by jury in the courts of the United States shall apply, but these rules may be relaxed if the ends of justice will be better served in so doing: *Provided*, that the introduction of irrelevant, immaterial, or unduly repetitious evidence is avoided. Only parties to the proceedings may present evidence, or cross-examine witnesses.

(b) The applicants and the Assistant Attorney General in charge of the Antitrust Division shall be parties in any hearing held hereunder. Other persons may intervene as parties as provided in § 48.11.

(c) The Assistant Attorney General for Administration shall procure the services of a stenographic reporter. One copy of the transcript produced shall be placed in the public docket. Additional copies may be purchased from the reporter or, if the arrangement with the reporter permits, from the Department of Justice at its cost.

(d) Following the hearing the administrative law judge shall render to the Attorney General his recommendation that the proposed arrangement be approved or denied approval in accordance with the standards of the Act. The recommendation shall be in writing, shall be based solely on the hearing record, and shall include a statement of the administrative law judge's findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law or discretion presented on the record. Copies of the recommendation shall be filed and sent to each party.

(e) Within 30 days of the date the administrative law judge files his recommendation, any party may file written exceptions to the recommendation for consideration by the Attorney General. Parties shall then have a further 15 days in which to file responses to any such exceptions.

§ 48.11 Intervention in hearings.

(a) Any person may intervene as a party in a hearing held under these regulations if (1) he has an interest which may be affected by the Attorney General's decision, and (2) it appears that his interest may not be adequately represented by existing parties.

(b) Application for intervention shall be made by filing in accordance with § 48.3(a) and (b), within 20 days after a hearing has been ordered, a statement of the nature of the applicant's interest, the way in which it may be affected, the facts and reasons in support thereof and the reasons why the applicant's interest may not be adequately represented by existing parties.

(c) Existing parties may file a statement in opposition to or in support of an application to intervene within 10 days of the filing of the application.

(d) Applications for intervention shall be decided by the Attorney General.

(e) Intervenors shall have the same rights as existing parties in connection with any hearing held under these regulations.

§ 48.12 Ex parte communications.

No person shall communicate on any matter related to these proceedings with the administrative law judge, the Attorney General or anyone having decisional responsibility, except as provided in these regulations.

§ 48.13 Record for decision.

(a) The record on which the Attorney General shall base his decision in the event a hearing is not held shall be comprised of all material filed in accordance with these regulations, including any material that has been ordered withheld from public disclosure.

(b) If a hearing is held, the record on which the Attorney General shall base his decision shall consist exclusively of the hearing record, the examiner's recommendation and any exceptions and responses filed with respect thereto.

§ 48.14 Decision by the Attorney General.

(a) The Attorney General shall decide, on the basis of the record as constituted in accordance with § 48.13, whether approval is warranted under the Act. In rendering his decision, the Attorney General shall file therewith a statement of his findings and conclusions and the reasons therefor, or where a hearing has been held, he may adopt the findings and conclusions of the administrative law judge.

(b) Approval of a proposed arrangement by the Attorney General shall not become effective until the tenth day after the filing of the Attorney General's decision as provided in this section.

§ 48.15 Temporary approval.

(a) If the Attorney General concludes that one or more of the newspapers involved would otherwise fail before the procedures under these regulations can be completed, he may grant temporary approval of whatever form of joint or unified action would be lawful under the Act if performed as part of an approved joint newspaper operating arrangement, and that he concludes is: (1) Essential to the survival of the newspaper or newspapers; and (2) most likely capable of being terminated without impairment to the ability of both newspapers to resume independent operation should final approval eventually be denied.

(b) Upon the filing of a request for temporary approval, the applicants shall publish notice of such application on the front pages of their respective newspapers for a period of three consecutive days in the case of daily newspapers or in the next issue in the case of weekly newspapers. The notice shall state: (1) That a request for temporary approval of a joint operating arrangement or other joint or unified action has been made to the Attorney General; and (2) that anyone wishing to protest the application for temporary approval may do so by delivering a statement of protest or telephoning his views to an employee of the Department of Justice, whose name, address and telephone number shall be designated by the Department upon receipt of the application for temporary approval, and that such protests must be received by the Department within five days of the first publication of notice in accordance with paragraph (a) of this section.

(c) The notice required by this section shall be in addition to the notice required by § 48.6.

(d) Such temporary approval may be granted without hearing at any time following the expiration of the period provided for protests, but shall create no presumption that final approval will be granted.

§ 48.16 Procedure for filing of terms of a renewal or amendment to an existing joint newspaper operating arrangement.

Within 30 days after a renewal of or an amendment to the terms of an existing arrangement, the parties to said renewal or amendment shall file five copies of the agreement of renewal or amendment. In the case of an amendment, the parties shall also file copies of the amended portion of the original agreement.

[Order No. 558-73, 39 FR 7, Jan. 2, 1974, as amended by Order No. 568-74, 39 FR 18646, May 29, 1974]

PART 49—ANTITRUST CIVIL PROCESS ACT

Sec.
49.1 Purpose.
49.2 Duties of Custodian.
49.3 Examination of material.
49.4 Deputy Custodians.

AUTHORITY: Sec. 4, 76 Stat. 550; 15 U.S.C. 1313.

SOURCE: Order No. 298-63, 28 FR 7395, July 19, 1963, unless otherwise noted.

§ 49.1 Purpose.

These regulations are issued in compliance with the requirements imposed by the provisions of section 4(c) of the Antitrust Civil Process Act, Pub. L. 87-664, 76 Stat. 550, 15 U.S.C. 1313(c). The terms used in this part shall be deemed to have the same meaning as similar terms used in that act.

§ 49.2 Duties of Custodian.

(a) Upon taking physical possession of material delivered pursuant to a Civil Investigation Demand issued under section 3(a) of the act, the Antitrust Document Custodian designated pursuant to section 4(a) of the act (subject to the general supervision of the Assistant Attorney General in charge of the Antitrust Division), shall, unless otherwise directed by a court of competent jurisdiction, select, from time to time, from among such material, the material the copying of which he deems necessary or appropriate for the official use of the Department of Justice, and he shall determine, from time to time, the number of copies of any such material that are to be reproduced pursuant to the act.

(b) Copies of material in the physical possession of the custodian pursuant to a civil investigation demand may be reproduced by or under the authority of an officer or employee of the Department of Justice designated by the custodian. Material for which a civil investigation demand has been issued but which is still in the physical possession of the person upon whom the demand has been served, may, by agreement between such persons and the custodian, be reproduced by such person, in which case the custodian may require that the copies so produced be duly certified as true copies of the original of the material involved.

§ 49.3 Examination of material.

Material produced pursuant to the Act, while in the custody of the Custodian, shall be for the official use of officers and employees of the Department of Justice in accordance with the Act, but such material shall, upon reasonable notice to the Custodian, be made available for examination by the person who produced such material or his duly authorized representative during regular office hours established for the Department of Justice. Examination of such material at other times may be authorized by the Assistant Attorney General or the Custodian.

§ 49.4 Deputy Custodians.

Deputy Custodians may perform such of the duties assigned to the Custodian as may be authorized or required by the Assistant Attorney General.

PART 50—STATEMENTS OF POLICY

Sec.
50.2 Release of information by personnel of the Department of Justice relating to criminal and civil proceedings.
50.3 Guidelines for the enforcement of Title VI, Civil Rights Act of 1964.
50.5 Notification of Consular Officers upon the arrest of foreign nationals.
50.6 Antitrust Division business review procedure.
50.7 Consent judgments in actions to enjoin discharges of pollutants.
50.8 Policy with regard to criteria for discretionary access to investigatory records of historical interest.
50.9 Policy with regard to open judicial proceedings.
50.10 Policy with regard to the issuance of subpoenas to members of the news media, subpoenas for telephone toll records of members of the news media, and the interrogation, indictment, or arrest of, members of the news media.
50.12 Exchange of FBI identification records.
50.13 Procedures for receipt and consideration of written comments submitted under subsection 2(b) of the Antitrust Procedures and Penalties Act.
50.14 Guidelines on employee selection procedures.
50.15 Representation of Federal officials and employees by Department of Justice attorneys or by private counsel furnished by the Department in civil and Congressional proceedings, and in state criminal proceedings in which Federal employees are sued or subpoenaed in their individual capacities.
50.16 Representation of Federal employees by private counsel at Federal expense.
50.17 Ex parte communications in informal rulemaking proceedings.
50.18 Criminal division review under the Foreign Corrupt Practices Act of 1977.
50.19 Procedures to be followed by government attorneys prior to filing recusal or disqualification motions.

§ 50.2 Release of information by personnel of the Department of Justice relating to criminal and civil proceedings.

(a) *General.* (1) The availability to news media of information in criminal and civil cases is a matter which has become increasingly a subject of concern in the administration of justice.

The purpose of this statement is to formulate specific guidelines for the release of such information by personnel of the Department of Justice.

(2) While the release of information for the purpose of influencing a trial is, of course, always improper, there are valid reasons for making available to the public information about the administration of the law. The task of striking a fair balance between the protection of individuals accused of crime or involved in civil proceedings with the Government and public understandings of the problems of controlling crime and administering government depends largely on the exercise of sound judgment by those responsible for administering the law and by representatives of the press and other media.

(3) Inasmuch as the Department of Justice has generally fulfilled its responsibilities with awareness and understanding of the competing needs in this area, this statement, to a considerable extent, reflects and formalizes the standards to which representatives of the Department have adhered in the past. Nonetheless, it will be helpful in ensuring uniformity of practice to set forth the following guidelines for all personnel of the Department of Justice.

(4) Because of the difficulty and importance of the questions they raise, it is felt that some portions of the matters covered by this statement, such as the authorization to make available Federal conviction records and a description of items seized at the time of arrest, should be the subject of continuing review and consideration by the Department on the basis of experience and suggestions from those within and outside the Department.

(b) *Guidelines to criminal actions.* (1) These guidelines shall apply to the release of information to news media from the time a person is the subject of a criminal investigation until any proceeding resulting from such an investigation has been terminated by trial or otherwise.

(2) At no time shall personnel of the Department of Justice furnish any statement or information for the purpose of influencing the outcome of a defendant's trial, nor shall personnel of the Department furnish any statement or information, which could reasonably be expected to be disseminated by means of public communication, if such a statement or information may reasonably be expected to influence the outcome of a pending or future trial.

(3) Personnel of the Department of Justice, subject to specific limitations imposed by law or court rule or order, may make public the following information:

(i) The defendant's name, age, residence, employment, marital status, and similar background information.

(ii) The substance or text of the charge, such as a complaint, indictment, or information.

(iii) The identity of the investigating and/or arresting agency and the length or scope of an investigation.

(iv) The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of physical items seized at the time of arrest.

Disclosures should include only incontrovertible, factual matters, and should not include subjective observations. In addition, where background information or information relating to the circumstances of an arrest or investigation would be highly prejudicial or where the release thereof would serve no law enforcement function, such information should not be made public.

(4) Personnel of the Department shall not disseminate any information concerning a defendant's prior criminal record.

(5) Because of the particular danger of prejudice resulting from statements in the period approaching and during trial, they ought strenuously to be avoided during that period. Any such statement or release shall be made only on the infrequent occasion when circumstances absolutely demand a disclosure of information and shall include only information which is clearly not prejudicial.

(6) The release of certain types of information generally tends to create dangers of prejudice without serving a significant law enforcement function.

Therefore, personnel of the Department should refrain from making available the following:

(i) Observations about a defendant's character.

(ii) Statements, admissions, confessions, or alibis attributable to a defendant, or the refusal or failure of the accused to make a statement.

(iii) Reference to investigative procedures such as fingerprints, polygraph examinations, ballistic tests, or laboratory tests, or to the refusal by the defendant to submit to such tests or examinations.

(iv) Statements concerning the identity, testimony, or credibility of prospective witnesses.

(v) Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial.

(vi) Any opinion as to the accused's guilt, or the possibility of a plea of guilty to the offense charged, or the possibility of a plea to a lesser offense.

(7) Personnel of the Department of Justice should take no action to encourage or assist news media in photographing or televising a defendant or accused person being held or transported in Federal custody. Departmental representatives should not make available photographs of a defendant unless a law enforcement function is served thereby.

(8) This statement of policy is not intended to restrict the release of information concerning a defendant who is a fugitive from justice.

(9) Since the purpose of this statement is to set forth generally applicable guidelines, there will, of course, be situations in which it will limit the release of information which would not be prejudicial under the particular circumstances. If a representative of the Department believes that in the interest of the fair administration of justice and the law enforcement process information beyond these guidelines should be released, in a particular case, he shall request the permission of the Attorney General or the Deputy Attorney General to do so.

(c) *Guidelines to civil actions.* Personnel of the Department of Justice associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial and which relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal records of a party, witness, or prospective witness.

(3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) An opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.

(5) Any other matter reasonably likely to interfere with a fair trial of the action.

(28 U.S.C. 509)

[Order No. 469-71, 36 FR 21028, Nov. 3, 1971, as amended by Order No. 602-75, 40 FR 22119, May 20, 1975]

§ 50.3 Guidelines for the enforcement of Title VI, Civil Rights Act of 1964.

(a) Where the heads of agencies having responsibilities under Title VI of the Civil Rights Act of 1964 conclude there is noncompliance with regulations issued under that title, several alternative courses of action are open. In each case, the objective should be to secure prompt and full compliance so that needed Federal assistance may commence or continue.

(b) Primary responsibility for prompt and vigorous enforcement of Title VI rests with the head of each department and agency administering programs of Federal financial assistance. Title VI itself and relevant Presidential directives preserve in each agency the authority and the duty to select, from among the available sanctions, the methods best designed to secure compliance in individual cases. The decision to terminate or refuse assistance is to be made by the agency head or his designated representative.

(c) This statement is intended to provide procedural guidance to the responsible department and agency officials in exercising their statutory discretion and in selecting, for each noncompliance situation, a course of action that fully conforms to the letter and spirit of section 602 of the Act and to the implementing regulations promulgated thereunder.

I. ALTERNATIVE COURSES OF ACTION

A. ULTIMATE SANCTIONS

The ultimate sanctions under Title VI are the refusal to grant an application for assistance and the termination of assistance being rendered. Before these sanctions may be invoked, the Act requires completion of the procedures called for by section 602. That section require the department or agency concerned (1) to determine that compliance cannot be secured by voluntary means, (2) to consider alternative courses of action consistent with achievement of the objectives of the statutes authorizing the particular financial assistance, (3) to afford the applicant an opportunity for a hearing, and (4) to complete the other procedural steps outlined in section 602, including notification to the appropriate committees of the Congress.

In some instances, as outlined below, it is legally permissible temporarily to defer action on an application for assistance, pending initiation and completion of section 602 procedures—including attempts to secure voluntary compliance with Title VI. Normally, this course of action is appropriate only with respect to applications for noncontinuing assistance or initial applications for programs of continuing assistance. It is not available where Federal financial assistance is due and payable pursuant to a previously approved application.

Whenever action upon an application is deferred pending the outcome of a hearing and subsequent section 602 procedures, the efforts to secure voluntary compliance and the hearing and such subsequent procedures, if found necessary, should be conducted without delay and completed as soon as possible.

B. AVAILABLE ALTERNATIVES

1. Court Enforcement

Compliance with the nondiscrimination mandate of Title VI may often be obtained more promptly by appropriate court action than by hearings and termination of assistance. Possibilities of judicial enforcement include (1) a suit to obtain specific enforcement of assurances, covenants running with federally provided property, statements or compliance or desegregation plans filed pursuant to agency regulations, (2) a suit to enforce compliance with other titles of the 1964 Act, other Civil Rights Acts, or constitutional or statutory provisions requiring nondiscrimination, and (3) initiation of, or intervention or other participation in, a suit for other relief designed to secure compliance.

The possibility of court enforcement should not be rejected without consulting the Department of Justice. Once litigation has been begun, the affected agency should consult with the Department of Justice before taking any further action with respect to the noncomplying party.

2. Administrative Action

A number of effective alternative courses not involving litigation may also be available in many cases. These possibilities include (1) consulting with or seeking assistance from other Federal agencies (such as the Contract Compliance Division of the Department of Labor) having authority to enforce nondiscrimination requirements; (2) consulting with or seeking assistance from State or local agencies having such authority; (3) bypassing a recalcitrant central agency applicant in order to obtain assurances from, or to grant assistance to complying local agencies; and (4) bypassing all recalcitrant non-Federal agencies and providing assistance directly to the complying ultimate beneficiaries. The possibility of utilizing such administrative alternatives should be considered at all stages of enforcement and used as appropriate or feasible.

C. INDUCING VOLUNTARY COMPLIANCE

Title VI requires that a concerted effort be made to persuade any noncomplying applicant or recipient voluntarily to comply with Title VI. Efforts to secure voluntary compliance should be undertaken at the outset in every noncompliance situation and should be pursued through each stage of enforcement action. Similarly, where an applicant fails to file an adequate assurance or apparently breaches its terms, notice should be promptly given of the nature of the noncompliance problem and of the possible consequences thereof, and an immediate effort made to secure voluntary compliance.

II. PROCEDURES

A. NEW APPLICATIONS

The following procedures are designed to apply in cases of noncompliance involving applications for one-time or noncontinuing assistance and initial applications for new or existing programs of continuing assistance.

1. Where the Requisite Assurance Has Not Been Filed or is Inadequate on its Face.

Where the assurance, statement of compliance or plan of desegregation required by agency regulations has not been filed or where, in the judgment of the head of the agency in question, the filed assurance fails on its face to satisfy the regulations, the agency head should defer action on the application pending prompt initiation and completion of section 602 procedures. The applicant should be notified immediately and attempts made to secure voluntary compliance. If such efforts fail, the applicant should promptly be offered a hearing for the purpose of determining whether an adequate assurance has in fact been filed.

If it is found that an adequate assurance has not been filed, and if administrative alternatives are ineffective or inappropriate, and court enforcement is not feasible, section 602 procedures may be completed and assistance finally refused.

2. Where it Appears that the Field Assurance Is Untrue or Is Not Being Honored.

Where an otherwise adequate assurance, statement of compliance, or plan has been filed in connection with an application for assistance, but prior to completion of action on the application the head of the agency in question has reasonable grounds, based on a substantiated complaint, the agency's own investigation, or otherwise, to believe that the representations as to compliance are in some material respect untrue or are not being honored, the agency head may defer action on the application pending prompt initiation and completion of section 602 procedures. The applicant should be notified immediately and attempts made to secure voluntary compliance. If such efforts fail and court enforcement is determined to be ineffective or inadequate, a hearing should be promptly initiated to determine whether, in fact, there is noncompliance.

If noncompliance is found, and if administrative alternatives are ineffective or inappropriate and court enforcement is still not feasible, section 602 procedures may be completed and assistance finally refused.

The above-described deferral and related compliance procedures would normally be appropriate in cases of an application for noncontinuing assistance. In the case of an initial application for a new or existing program of continuing assistance, deferral would often be less appropriate because of the opportunity to secure full compliance during the life of the assistance program. In those cases in which the agency does not defer action on the application, the applicant should be given prompt notice of the asserted noncompliance; funds should be paid out for short periods only, with no long-term commitment of assistance given; and the applicant advised that acceptance of the funds carries an enforceable obligation of nondiscrimination and the risk of invocation of severe sanctions, if noncompliance in fact is found.

B. REQUESTS FOR CONTINUATION OR RENEWAL OF ASSISTANCE

The following procedures are designed to apply in cases of noncompliance involving all submissions seeking continuation or renewal under programs of continuing assistance.

In cases in which commitments for Federal financial assistance have been made prior to the effective date of Title VI regulations and funds have not been fully disbursed, or in which there is provision for future periodic payments to continue the program or activity for which a present recipient has previously applied and qualified, or in which assistance is given without formal application pursuant to statutory direction or authorization, the responsible agency may nonetheless require an assurance, statement of compliance, or plan in connection with disbursement or further funds. However, once a particular program grant or loan has been made or an application for a certain type of assistance for a specific or indefinite period has been approved, no funds due and payable pursuant to that grant, loan, or application, may normally be deferred or withheld without first completing the procedures prescribed in section 602.

Accordingly, where the assurance, statement of compliance, or plan required by agency regulations has not been filed or where, in the judgment of the head of the agency in question, the filed assurance fails on its face to satisfy the regulations, or there is reasonable cause to believe it untrue or not being honored, the agency head should, if efforts to secure voluntary compliance are unsuccessful, promptly institute a hearing to determine whether an adequate assurance has in fact been filed, or whether, in fact, there is noncompliance, as the case may be. There should ordinarily be no deferral of action on the submission or withholding of funds in this class of cases, although the limitation of the payout of funds to short periods may appropriately be ordered. If noncompliance is found, and if administrative alternatives are ineffective or inappropriate and court enforcement is not feasible, section 602 procedures may be completed and assistance terminated.

C. SHORT-TERM PROGRAMS

Special procedures may sometimes be required where there is noncompliance with Title VI regulations in connection with a program of such short total duration that all assistance funds will have to be paid out before the agency's usual administrative procedures can be completed and where deferral in accordance with these guidelines would be tantamount to a final refusal to grant assistance.

In such a case, the agency head may, although otherwise following these guidelines, suspend normal agency procedures and institute expedited administrative proceedings to determine whether the regulations have been violated. He should simultaneously refer the matter to the Department of Justice for consideration of possible court enforcement, including interim injunctive relief. Deferral of action on an application is appropriate, in accordance with these guidelines, for a reasonable period of time, provided such action is consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with the action taken. As in other cases, where noncompliance is found in the hearing proceeding, and if administrative alternatives are ineffective or inappropriate and court enforcement is not feasible, section 602 procedures may be completed and assistance finally refused.

III. PROCEDURES IN CASES OF SUBGRANTEES

In situations in which applications for Federal assistance are approved by some agency other than the Federal granting agency, the same rules and procedures would apply. Thus, the Federal Agency should instruct the approving agency—typically a State agency—to defer approval or refuse to grant funds, in individual cases in which such action would be taken by the original granting agency itself under the above procedures. Provision should be made for appropriate notice of such action to the Federal agency which retains responsibility for compliance with section 602 procedures.

IV. EXCEPTIONAL CIRCUMSTANCES

The Attorney General should be consulted in individual cases in which the head of an agency believes that the objectives of Title VI will be best achieved by proceeding other than as provided in these guidelines.

V. COORDINATION

While primary responsibility for enforcement of Title VI rests directly with the head of each agency, in order to assure coordination of Title VI enforcement and consistency among agencies, the Department of Justice should be notified in advance of applications on which action is to be deferred, hearings to be scheduled, and refusals and terminations of assistance or other enforcement actions or procedures to be undertaken. The Department also should be kept advised of the progress and results of hearings and other enforcement actions.

(E.O. 11247, 30 FR 12327, 3 CFR 1965 Supp., p. 177)

[31 FR 5292, Apr. 2, 1966]

§ 50.5 Notification of Consular Officers upon the arrest of foreign nationals.

(a) This statement is designed to establish a uniform procedure for consular notification where nationals of foreign countries are arrested by officers of this Department on charges of criminal violations. It conforms to practice under international law and in particular implements obligations undertaken by the United States pursuant to treaties with respect to the arrest and detention of foreign nationals. Some of the treaties obligate the United States to notify the consular officer only upon the demand or request of the arrested foreign national. On the other hand, some of the treaties require notifying the consul of the arrest of a foreign national whether or not the arrested person requests such notification.

(1) In every case in which a foreign national is arrested the arresting officer shall inform the foreign national that his consul will be advised of his arrest unless he does not wish such notification to be given. If the foreign national does not wish to have his consul notified, the arresting officer shall also inform him that in the event there is a treaty in force between the United States and his country which requires such notification, his consul must be notified regardless of his wishes and, if such is the case, he will be advised of such notification by the U.S. Attorney.

(2) In all cases (including those where the foreign national has stated that he does not wish his consul to be notified) the local office of the Federal Bureau of Investigation or the local Marshal's office, as the case may be, shall inform the nearest U.S. Attorney of the arrest and of the arrested person's wishes regarding consular notification.

(3) The U.S. Attorney shall then notify the appropriate consul except where he has been informed that the foreign national does not desire such notification to be made. However, if there is a treaty provision in effect which requires notification of consul, without reference to a demand or request of the arrested national, the consul shall be notified even if the ar-

rested person has asked that he not be notified. In such case, the U.S. Attorney shall advise the foreign national that his consul has been notified and inform him that notification was necessary because of the treaty obligation.

(b) The procedure prescribed by this statement shall not apply to cases involving arrests made by the Immigration and Naturalization Service in administrative expulsion or exclusion proceedings, since that Service has heretofore established procedures for the direct notification of the appropriate consular officer upon such arrest. With respect to arrests made by the Service for violations of the criminal provisions of the immigration laws, the U.S. Marshal, upon delivery of the foreign national into his custody, shall be responsible for informing the U.S. Attorney of the arrest in accordance with numbered paragraph 2 of this statement.

(28 U.S.C. 508, 509, 510)

[Order No. 375-67, 32 FR 1040, Jan. 28, 1967]

§ 50.6 Antitrust Division business review procedure.

Although the Department of Justice is not authorized to give advisory opinions to private parties, for several decades the Antitrust Division has been willing in certain circumstances to review proposed business conduct and state its enforcement intentions. This originated with a "railroad release" procedure under which the Division would forego the initiation of criminal antitrust proceedings. The procedure was subsequently expanded to encompass a "merger clearance" procedure under which the Division would state its present enforcement intention with respect to a merger or acquisition; and the Department issued a written statement entitled "Business Review Procedure." That statement has been revised several times.

1. A request for a business review letter must be submitted in writing to the Assistant Attorney General, Antitrust Division, Department of Justice, Washington, D.C. 20530.

2. The Division will consider only requests with respect to proposed business conduct, which may involve either domestic or foreign commerce.

3. The Division may, in its discretion, refuse to consider a request.

4. A business review letter shall have no application to any party which does not join in the request therefor.

5. The requesting parties are under an affirmative obligation to make full and true disclosure with respect to the business conduct for which review is requested. Each request must be accompanied by all relevant data including background information, complete copies of all operative documents and detailed statements of all collateral oral understandings, if any. All parties requesting the review letter must provide the Division with whatever additional information or documents the Division may thereafter request in order to review the matter. Such additional information, if furnished orally, shall be promptly confirmed in writing. In connection with any request for review the Division will also conduct whatever independent investigation it believes is appropriate.

6. No oral clearance, release or other statement purporting to bind the enforcement discretion of the Division may be given. The requesting party may rely upon only a written business review letter signed by the Assistant Attorney General in charge of the Antitrust Division or his delegate.

7. (a) If the business conduct for which review is requested is subject to approval by a regulatory agency, a review request may be considered before agency approval has been obtained only where it appears that exceptional and unnecessary burdens might otherwise be imposed on the party or parties requesting review, or where the agency specifically requests that a party or parties request review. However, any business review letter issued in these as in any other circumstances will state only the Department's present enforcement intentions under the antitrust laws. It shall in no way be taken to indicate the Department's views on the legal or factual issues that may be raised before the regulatory agency, or in an appeal from the regulatory agency's decision. In particular, the issuance of such a letter is not to be represented to mean that the Division believes that there are no anticompetitive consequences warranting agency consideration.

(b) The submission of a request for a business review, or its pendency, shall in no way alter any responsibility of any party to comply with the Premerger Notification provisions of the Antitrust Improvements Act of 1976, 15 U.S.C. 18A, and the regulations promulgated thereunder, 16 CFR, Part 801.

8. After review of a request submitted hereunder the Division may: state its pres-

ent enforcement intention with respect to the proposed business conduct; decline to pass on the request; or take such other position or action as it considers appropriate.

9. A business review letter states only the enforcement intention of the Division as of the date of the letter, and the Division remains completely free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest. As to a stated present intention not to bring an action, however, the Division has never exercised its right to bring a criminal action where there has been full and true disclosure at the time of presenting the request.

10. (a) Simultaneously upon notifying the requesting party of and Division action described in paragraph 8, the business review request, and the Division's letter in response shall be indexed and placed in a file available to the public upon request.

(b) On that date or within thirty days after the date upon which the Division takes any action as described in paragraph 8, the information supplied to support the business review request and any other information supplied by the requesting party in connection with the transaction that is the subject of the business review request, shall be indexed and placed in a file with the request and the Division's letter, available to the public upon request. This file shall remain open for one year, after which time it shall be closed and the documents either returned to the requesting party or otherwise disposed of, at the discretion of the Antitrust Division.

(c) Prior to the time the information described in subparagraphs (a) and (b) is indexed and made publicly available in accordance with the terms of that subparagraph, the requesting party may ask the Division to delay making public some or all of such information. However the requesting party must: (1) Specify precisely the documents or parts thereof that he asks not be made public; (2) state the minimum period of time during which nondisclosure is considered necessary; and (3) justify the request for non-disclosure, both as to content and time, by showing good cause therefor, including a showing that disclosure would have a detrimental effect upon the requesting party's operations or relationships with actual or potential customers, employees, suppliers (including suppliers of credit), stockholders, or competitors. The Department of Justice, in its discretion, shall make the final determination as to whether good cause for non-disclosure has been shown.

(d) Nothing contained in subparagraphs (a), (b) and (c) shall limit the Division's right, in its discretion, to issue a press release describing generally the identity of the requesting party or parties and the nature of action taken by the Division upon the request.

(e) This paragraph reflects a policy determination by the Justice Department and is subject to any limitations on public disclosure arising from statutory restrictions, Executive Order, or the national interest.

11. Any requesting party may withdraw a request for review at any time. The Division remains free, however, to submit such comments to such requesting party as it deems appropriate. Failure to take action after receipt of documents or information whether submitted pursuant to this procedure or otherwise, does not in any way limit or stop the Division from taking such action at such time thereafter as it deems appropriate. The Division reserves the right to retain documents submitted to it under this procedure or otherwise and to use them for all governmental purposes.

(28 U.S.C. 509 and 510; 5 U.S.C. 301)

[42 FR 11831, Mar. 1, 1977]

§ 50.7 Consent judgments in actions to enjoin discharges of pollutants.

(a) It is hereby established as the policy of the Department of Justice to consent to a proposed judgment in an action to enjoin discharges of pollutants into the environment only after or on condition that an opportunity is afforded persons (natural or corporate) who are not named as parties to the action to comment on the proposed judgment prior to its entry by the court.

(b) To effectuate this policy, each proposed judgment which is within the scope of paragraph (a) of this section shall be lodged with the court as early as feasible but at least 30 days before the judgment is entered by the court. Prior to entry of the judgment, or some earlier specified date, the Department of Justice will receive and consider, and file with the court, any written comments, views or allegations relating to the proposed judgment. The Department shall reserve the right (1) to withdraw or withhold its consent to the proposed judgment if the comments, views and allegations concerning the judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper or inadequate and (2) to oppose an attempt by any person to intervene in the action.

(c) The Assistant Attorney General in charge of the Land and Natural Resources Division may establish procedures for implementing this policy. Where it is clear that the public interest in the policy hereby established is not compromised, the Assistant Attorney General may permit an exception to this policy in a specific case where extraordinary circumstances require a period shorter than 30 days or a procedure other than stated herein.

(28 U.S.C. 509 and 510; 5 U.S.C. 301)

[Order No. 529-73, 38 FR 19029, July 17, 1973]

§ 50.8 Policy with regard to criteria for discretionary access to investigatory records of historical interest.

(a) In response to the increased demand for access to investigatory files of historical interest that were compiled by the Department of Justice for law enforcement purposes and are thus exempted from compulsory disclosure under the Freedom of Information Act, the Department has decided to modify to the extent hereinafter indicated its general practice regarding their discretionary release. Issuance of this section and actions considered or taken pursuant hereto are not to be deemed a waiver of the Government's position that the materials in question are exempted under the Act. By providing for exemptions in the Act, Congress conferred upon agencies the option, at the discretion of the agency, to grant or deny access to exempt materials unless prohibited by other law. Possible releases that may be considered under this section are at the sole discretion of the Attorney General and of those persons to whom authority hereunder may be delegated.

(b) Persons outside the Executive Branch engaged in historical research projects will be accorded access to information or material of historical interest contained within this Department's investigatory files compiled for law enforcement purposes that are more than fifteen years old and are no longer substantially related to current investigative or law enforcement activities, subject to deletions to the minimum extent deemed necessary to protect law enforcement efficiency and the privacy, confidences, or other legitimate interests of any person named or identified in such files. Access may be requested pursuant to the Department's regulations in 28 CFR Part 16, Subpart A, as revised February 14, 1973, which set forth procedures and fees for processing such requests.

(c) The deletions referred to above will generally be as follows:

(1) Names or other identifying information as to informants;

(2) Names or other identifying information as to law enforcement personnel, where the disclosure of such information would jeopardize the safety of the employee or his family, or would disclose information about an employee's assignments that would impair his ability to work effectively;

(3) Unsubstantiated charges, defamatory material, matter involving an unwarranted invasion of privacy, or other matter which may be used adversely to affect private persons;

(4) Investigatory techniques and procedures; and

(5) Information the release of which would deprive an individual of a right to a fair trial or impartial adjudication, or would interfere with law enforcement functions designed directly to protect individuals against violations of law.

(d) This policy for the exercise of administrative discretion is designed to further the public's knowledge of matters of historical interest and, at the same time, to preserve this Department's law enforcement efficiency and protect the legitimate interests of private persons.

[Order No. 528-73, 38 FR 19029, July 17, 1973]

§ 50.9 Policy with regard to open judicial proceedings.

Because of the vital public interest in open judicial proceedings, the Government has a general overriding affirmative duty to oppose their closure. There is, moreover, a strong presumption against closing proceedings or portions thereof, and the Department of Justice foresees very few cases in which closure would be warranted. The Government should take a position on any motion to close a judicial proceeding, and should ordinarily oppose closure; it should move for or consent to closed proceedings only when closure is plainly essential to the interests of justice. In furtherance of the Department's concern for the right of the public to attend judicial proceedings and the Department's obligation to the fair administration of justice, the following guidelines shall be adhered to by all attorneys for the United States.

(a) These guidelines apply to all federal trials, pre- and post-trial evidentiary hearings, plea proceedings, sentencing proceedings, or portions thereof, except as indicated in paragraph (e) of this section.

(b) A Government attorney has a compelling duty to protect the societal interest in open proceedings.

(c) A Government attorney shall not move for or consent to closure of a proceeding covered by these guidelines unless:

(1) No reasonable alternative exists for protecting the interests at stake;

(2) Closure is clearly likely to prevent the harm sought to be avoided;

(3) The degree of closure is minimized to the greatest extent possible;

(4) The public is given adequate notice of the proposed closure; and, in addition, the motion for closure is made on the record, except where the disclosure of the details of the motion papers would clearly defeat the reason for closure specified under paragraph (c)(6) of this section;

(5) Transcripts of the closed proceedings will be unsealed as soon as the interests requiring closure no longer obtain; and

(6) Failure to close the proceedings will produce;

(i) A substantial likelihood of denial of the right of any person to a fair trial; or

(ii) A substantial likelihood of imminent danger to the safety of parties, witnesses, or other persons; or

(iii) A substantial likelihood that ongoing investigations will be seriously jeopardized.

(d) A Government attorney shall not move for or consent to the closure of:

(1) A civil proceeding except with the express authorization of the Deputy Attorney General, based on articulated findings which meet the requirements of paragraph (c) of this section; or

(2) A criminal proceeding except with the express authorization of the Associate Attorney General, based on articulated findings which meet the requirements of paragraph (c) of this section.

(e) These guidelines do not apply to:

(1) The closure of part of a judicial proceeding where necessary to protect national security information or classified documents; or

(2) *In camera* inspection, consideration or sealing of documents, including documents provided to the Government under a promise of confidentiality, where permitted by statute, rule of evidence or privilege; or

(3) Grand jury proceedings or proceedings ancillary thereto; or

(4) Conferences traditionally held at the bench or in chambers during the course of an open proceeding.

(f) The principles set forth in this section are intended to provide guidance to attorneys for the Government and are not intended to create or recognize any legally enforceable right in any person.

[Order No. 914-80, 45 FR 69214, Oct. 20, 1980, as amended by Order No. 960-81, 46 FR 52359, Oct. 27, 1981]

§ 50.10 Policy with regard to the issuance of subpoenas to members of the news media, subpoenas for telephone toll records of members of the news media, and the interrogation, indictment, or arrest of, members of the news media.

Because freedom of the press can be no broader than the freedom of reporters to investigate and report the news, the prosecutorial power of the government should not be used in such a way that it impairs a reporter's responsibility to cover as broadly as possible controversial public issues. This policy statement is thus intended to provide protection for the news media from forms of compulsory process, whether civil or criminal, which might impair the news gathering function. In balancing the concern that the Department of Justice has for the work of the news media and the Department's obligation to the fair administration of justice, the following guidelines shall be adhered to by all members of the Department in all cases:

(a) In determining whether to request issuance of a subpoena to a member of the news media, or for telephone toll records of any member of the news media, the approach in every case must be to strike the proper balance between the public's interest in the free dissemination of ideas and information and the public's interest in effective law enforcement and the fair administration of justice.

(b) All reasonable attempts should be made to obtain information from alternative sources before considering issuing a subpoena to a member of the news media, and similarly all reasonable alternative investigative steps should be taken before considering issuing a subpoena for telephone toll records of any member of the news media.

(c) Negotiations with the media shall be pursued in all cases in which a subpoena to a member of the news media is contemplated. These negotiations should attempt to accommodate the interests of the trial or grand jury with the interests of the media. Where the nature of the investigation permits, the government should make clear what its needs are in a particular case as well as its willingness to respond to particular problems of the media.

(d) Negotiations with the affected member of the news media shall be pursued in all cases in which a subpoena for the telephone toll records of any member of the news media is contemplated where the responsible Assistant Attorney General determines that such negotiations would not pose a substantial threat to the integrity of the investigation in connection with which the records are sought. Such determination shall be reviewed by the Attorney General when considering a subpoena authorized under paragraph (e) of this section.

(e) No subpoena may be issued to any member of the news media or for the telephone toll records of any member of the news media without the express authorization of the Attorney General: *Provided*, That, if a member of the news media with whom negotiations are conducted under paragraph (c) of this section expressly agrees to provide the material sought, and if that material has already been published or broadcast, the United States Attorney or the responsible Assistant Attorney General, after having been personally satisfied that the requirements of this section have been met, may authorize issuance of the subpoena and shall thereafter submit to the Office of Public Affairs a report detailing the circumstances surrounding the issuance of the subpoena.

(f) In requesting the Attorney General's authorization for a subpoena to a member of the news media, the following principles will apply:

(1) In criminal cases, there should be reasonable grounds to believe, based on information obtained from nonmedia sources, that a crime has occurred, and that the information sought is essential to a successful investigation—particularly with reference to directly establishing guilt or innocence. The subpoena should not be used to obtain peripheral, nonessential, or speculative information.

(2) In civil cases there should be reasonable grounds, based on nonmedia sources, to believe that the information sought is essential to the successful completion of the litigation in a case of substantial inportance. The subpoena should not be used to obtain peripheral, nonessential, or speculative information.

(3) The government should have unsuccessfully attempted to obtain the information from alternative nonmedia sources.

(4) The use of subpoenas to members of the news media should, except under exigent circumstances, be limited to the verification of published information and to such surrounding circumstances as relate to the accuracy of the published information.

(5) Even subpoena authorization requests for publicly disclosed information should be treated with care to avoid claims of harassment.

(6) Subpoenas should, wherever possible, be directed at material information regarding a limited subject matter, should cover a reasonably limited period of time, and should avoid requiring production of a large volume

of unpublished material. They should give reasonable and timely notice of the demand for documents.

(g) In requesting the Attorney General's authorization for a subpoena for the telephone toll records of members of the news media, the following principles will apply:

(1) There should be reasonable ground to believe that a crime has been committed and that the information sought is essential to the successful investigation of that crime. The subpoena should be as narrowly drawn as possible; it should be directed at relevant information regarding a limited subject matter and should cover a reasonably limited time period. In addition, prior to seeking the Attorney General's authorization, the government should have pursued all reasonable alternative investigation steps as required by paragraph (b) of this section.

(2) When there have been negotiations with a member of the news media whose telephone toll records are to be subpoenaed, the member shall be given reasonable and timely notice of the determination of the Attorney General to authorize the subpoena and that the government intends to issue it.

(3) When the telephone toll records of a member of the news media have been subpoenaed without the notice provided for in paragraph (e)(2) of this section, notification of the subpoena shall be given the member of the news media as soon thereafter as it is determined that such notification will no longer pose a clear and substantial threat to the integrity of the investigation. In any event, such notification shall occur within 45 days of any return made pursuant to the subpoena, except that the responsible Assistant Attorney General may authorize delay of notification for no more than an additional 45 days.

(4) Any information obtained as a result of a subpoena issued for telephone toll records shall be closely held so as to prevent disclosure of the information to unauthorized persons or for improper purposes.

(h) No member of the Department shall subject a member of the news media to questioning as to any offense which he is suspected of having committed in the course of, or arising out of, the coverage or investigation of a news story, or while engaged in the performance of his official duties as a member of the news media, without the express authority of the Attorney General: *Provided, however,* That where exigent circumstances preclude prior approval, the requirements of paragraph (l) of this section shall be observed.

(i) A member of the Department shall secure the express authority of the Attorney General before a warrant for an arrest is sought, and whenever possible before an arrest not requiring a warrant, of a member of the news media for any offense which he is suspected of having committed in the course of, or arising out of, the coverage or investigation of a news story, or while engaged in the performance of his official duties as a member of the news media.

(j) No member of the Department shall present information to a grand jury seeking a bill of indictment, or file an information, against a member of the news media for any offense which he is suspected of having committed in the course of, or arising out of, the coverage or investigation of a news story, or while engaged in the performance of his official duties as a member of the news media, without the express authority of the Attorney General.

(k) In requesting the Attorney General's authorization to question, to arrest or to seek an arrest warrant for, or to present information to a grand jury seeking a bill of indictment or to file an information against, a member of the news media for an offense which he is suspected of having committed during the course of, or arising out of, the coverage or investigation of a news story, or committed while engaged in the performance of his official duties as a member of the news media, a member of the Department shall state all facts necessary for determination of the issues by the Attorney General. A copy of the request shall be sent to the Director of Public Affairs.

(l) When an arrest or questioning of a member of the news media is necessary before prior authorization of the Attorney General can be obtained, notification of the arrest or questioning, the circumstances demonstrating that an exception to the requirement of prior authorization existed, and a statement containing the information that would have been given in requesting prior authorization, shall be communicated immediately to the Attorney General and to the Director of Public Affairs.

(m) In light of the intent of this Section to protect freedom of the press, news gathering functions, and news media sources, this policy statement does not apply to demands for purely commercial or financial information unrelated to the news gathering function.

(n) Failure to obtain the prior approval of the Attorney General may constitute grounds for an administrative reprimand or other appropriate disciplinary action. The principles set forth in this section are not intended to create or recognize any legally enforceable right in any person.

[Order No. 916-80, 45 FR 76436, Nov. 19, 1980]

§ 50.12 Exchange of FBI identification records.

(a) The Federal Bureau of Investigation, hereinafter referred to as the FBI, is authorized to expend funds for the exchange of identification records with officials of federally chartered or insured banking institutions and with officials of state and local governments for purposes of employment and licensing, pursuant to section 201 of Pub. L. 92-544 (86 Stat. 1115). Heretofore, the FBI has disseminated identification records containing arrest information maintained by the FBI Identification Division, with and without dispositional information, pertaining to particular individuals upon requests of institutions and agencies authorized to receive such data under provisions of Pub. L. 92-544 (86 Stat. 1115).

(b) The Director of the FBI is authorized by 28 CFR 0.85(j) to approve procedures relating to the exchange of identification records to federally chartered or insured banking institutions, officials of State and local governments for purposes of employment and licensing, and to certain segments of the securities industry. Under this authority, effective July 1, 1974, the FBI Identification Division will not include arrest data more than 1-year old not accompanied by dispositions in identification records exchanged with banking institutions, certain segments of the securities industry, and State and local agencies for employment and licensing purposes. The 1-year provision will provide the time necessary for the adjudication of most offenses. This procedural change in policy is being placed in effect to reduce possible denials of employment opportunities or licensing privileges to individuals as a result of the dissemination of identification records not containing final dispositional data concerning criminal charges brought against such individuals.

(c) There will be no change in FBI Identification Division procedures for dissemination of all arrest information, with and without dispositional data, for law enforcement purposes and to agencies of the Federal Government as currently authorized by 28 U.S.C. 534.

(28 U.S.C. 509; 5 U.S.C. 301, 552)

[39 FR 23057, June 26, 1974, as amended by Order No. 805-78, 43 FR 50174, Oct. 27, 1978]

§ 50.13 Procedures for receipt and consideration of written comments submitted under subsection 2(b) of the Antitrust Procedures and Penalties Act.

The following procedures shall be followed in receiving and considering written comments relating to proposals for consent judgments in antitrust cases prior to their entry by the Court.

(a) Comments shall be directed to the chief of the litigating section or field office of the Antitrust Division to which the case is assigned.

(b) The response to comments shall be prepared by the trial staff under the immediate supervision of the chief of the section or office to which the case is assigned.

(c) Proposed responses shall be reviewed and approved by the Office of Operations of the Antitrust Division prior to being issued.

(d) Any response to a comment which brings into serious question the wisdom of a proposed relief provision or raises policy issues not previously considered should be forwarded for review to the Assistant Attorney General for the Antitrust Division through the Office of Operations.

(28 U.S.C. 509 and 510; 5 U.S.C. 301; 15 U.S.C. 16(d))

[Directive 7-75, 40 FR 34114, Aug. 14, 1975; as amended by Order No. 857-79, 44 FR 57927, Oct. 9, 1979]

§ 50.14 Guidelines on employee selection procedures.

The guidelines set forth below are intended as a statement of policy of the Department of Justice and will be applied by the Department in exercising its responsibilities under Federal law relating to equal employment opportunity.

UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1978)

NOTE: These guidelines are issued jointly by four agencies. Separate official adoptions follow the guidelines in this Part IV as follows: Civil Service Commission, Department of Justice, Equal Employment Opportunity Commission, Department of Labor.

For official citation see section 18 of these guidelines.

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GENERAL PRINCIPLES

SECTION 1. *Statement of purpose—A. Need for uniformity—Issuing agencies.* The Federal government's need for a uniform set of principles on the question of the use of tests and other selection procedures has long been recognized. The Equal Employment Opportunity Commission, the Civil Service Commission, the Department of Labor, and the Department of Justice jointly have adopted these uniform guidelines to meet that need, and to apply the same principles to the Federal Government as are applied to other employers.

B. *Purpose of guidelines.* These guidelines incorporate a single set of principles which are designed to assist employers, labor organizations, employment agencies, and licensing and certification boards to comply with requirements of Federal law prohibiting employment practices which discriminate on grounds of race, color, religion, sex, and national origin. They are designed to provide a framework for determining the proper use of tests and other selection procedures. These guidelines do not require a user to conduct validity studies of selection procedures where no adverse impact results. However, all users are encouraged to use selection procedures which are valid, especially users operating under merit principles.

C. *Relation to prior guidelines.* These guidelines are based upon and supersede previously issued guidelines on employee selection procedures. These guidelines have been built upon court decisions, the previously issued guidelines of the agencies, and the practical experience of the agencies, as well as the standards of the psychological profession. These guidelines are intended to be consistent with existing law.

SEC. 2. *Scope—A. Application of guidelines.* These guidelines will be applied by the Equal Employment Opportunity Commission in the enforcement of Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (hereinafter "Title VII"); by the Department of Labor, and the contract compliance agencies until the transfer of authority contemplated by the President's Reorganization Plan No. 1 of 1978, in the administration and enforcement of Executive Order 11246, as amended by Executive Order 11375 (hereinafter "Executive Order 11246"); by the Civil Service Commission and other Federal agencies subject to section 717 of Title VII; by the Civil Service Commission in exercising its responsibilities toward State and local governments under section 208(b)(1) of the Intergovernmental-Personnel Act; by the Department of Justice in exercising its responsibilities under Federal law; by the Office of Revenue Sharing of the Department of the Treasury under the State and Local Fiscal Assistance Act of 1972, as amended; and by any other Federal agency which adopts them.

B. *Employment decisions.* These guidelines apply to tests and other selection procedures which are used as a basis for any employment decision. Employment decisions include but are not limited to hiring, promotion, demotion, membership (for example, in a labor organization), referral, retention, and licensing and certification, to the extent that licensing and certification may be covered by Federal equal employment opportunity law. Other selection decisions, such as selection for training or transfer, may also be considered employment decisions if they lead to any of the decisions listed above.

C. *Selection procedures.* These guidelines apply only to selection procedures which are used as a basis for making employment decisions. For example, the use of recruiting procedures designed to attract members of a particular race, sex, or ethnic group, which were previously denied employment opportunities or which are currently underutilized, may be necessary to bring an employer into compliance with Federal law, and is frequently an essential element of any effective affirmative action program; but recruitment practices are not considered by these guidelines to be selection procedures. Similarly, these guidelines do not pertain to the question of the lawfulness of a seniority system within the meaning of section 703(h), Executive Order 11246 or other provisions of Federal law or regulation, except to the extent that such systems utilize selection procedures to determine qualifications or abilities to perform the job. Nothing in these guidelines is intended or should be interpreted as discouraging the use of a selection procedure for the purpose of determining qualifications or for the purpose of selection on the basis of relative qualifications, if the selection procedure had been validated in accord with these guidelines for each such purpose for which it is to be used.

D. *Limitations.* These guidelines apply only to persons subject to Title VII, Executive Order 11246, or other equal employment opportunity requirements of Federal law. These guidelines do not apply to responsibilities under the Age Discrimination in Employment Act of 1967, as amended, not to discriminate on the basis of age, or under sections 501, 503, and 504 of the Rehabilitation Act of 1973, not to discriminate on the basis of handicap.

E. *Indian preference not affected.* These guidelines do not restrict any obligation imposed or right granted by Federal law to users to extend a preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation.

SEC. 3. *Discrimination defined: Relationship between use of selection procedures and discrimination*—A. *Procedure having adverse impact constitutes discrimination unless justified.* The use of any selection procedure which has an adverse impact on the hiring, promotion, or other employment or membership opportunities of members of any race, sex, or ethnic group will be considered to be discriminatory and inconsistent with these guidelines, unless the procedure has been validated in accordance with these guidelines, or the provisions of section 6 below are satisfied.

B. *Consideration of suitable alternative selection procedures.* Where two or more selection procedures are available which serve the user's legitimate interest in efficient and trustworthy workmanship, and which are substantially equally valid for a given purpose, the user should use the procedure which has been demonstrated to have the lesser adverse impact. Accordingly, whenever a validity study is called for by these guidelines, the user should include, as a part of the validity study, an investigation of suitable alternative selection procedures and suitable alternative methods of using the selection procedure which have as little adverse impact as possible, to determine the appropriateness of using or validating them in accord with these guidelines. If a user has made a reasonable effort to become aware of such alternative procedures and validity has been demonstrated in accord with these guidelines, the use of the test or other selection procedure may continue until such time as it should reasonably be reviewed for currency. Whenever the user is shown an alternative selection procedure with evidence of less adverse impact and substantial evidence of validity for the same job in similar circumstances, the user should investigate it to determine the appropriateness of using or validating it in accord with these guidelines. This subsection is not intended to preclude the combination of procedures into a significantly more valid procedure, if the use of such a combination has been shown to be in compliance with the guidelines.

SEC. 4. *Information on impact*—A. *Records concerning impact.* Each user should maintain and have available for inspection records or other information which will disclose the impact which its tests and other selection procedures have upon employment opportunities of persons by identifiable race, sex, or ethnic group as set forth in paragraph B below in order to determine compliance with these guidelines. Where there are large numbers of applicants and procedures are administered frequently, such information may be retained on a sample basis, provided that the sample is appropriate in terms of the applicant population and adequate in size.

B. *Applicable race, sex, and ethnic groups for recordkeeping.* The records called for by this section are to be maintained by sex, and the following races and ethnic groups: Blacks (Negroes), American Indians (including Alaskan Natives), Asians (including Pacific Islanders), Hispanic (including persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin or culture regardless of race), whites (Caucasians) other than Hispanic, and totals. The race, sex, and ethnic classifications called for by this section are consistent with the Equal Employment Opportunity Standard Form 100, Employer Information Report EEO-1 series of reports. The user should adopt safeguards to insure that the records required by this paragraph are used for appropriate purposes such as determining adverse impact, or (where required) for developing and monitoring affirmative action programs, and that such records are not used improperly. See sections 4E and 17(4), below.

C. *Evaluation of selection rates. The "bottom line."* If the information called for by sections 4A and B above shows that the total selection process for a job has an adverse impact, the individual components of the selection process should be evaluated for adverse impact. If this information shows that the total selection process does not have an adverse impact, the Federal enforcement agencies, in the exercise of their administrative and prosecutorial discretion, in usual circumstances, will not expect a user to evaluate the individual components for adverse impact, or to validate such individual components, and will not take enforcement action based upon adverse impact of any component of that process, including the separate parts of a multipart selection procedure or any separate procedure that is used as an alternative method of selection. However, in the following circumstances the Federal enforcement agencies will expect a user to evaluate the individual components for adverse impact and may, where appropriate, take enforcement action with respect to the individual components: (1) Where the selection procedure is a significant factor in the continuation of patterns of assignments of incumbent employees caused by prior discriminatory employment practices, (2) where the weight of court decisions or administrative interpretations hold that a specific procedure (such as height or weight requirements or no-arrest records) is not job related in the same or similar circumstances. In unusual circumstances, other than those listed in (1) and (2) above, the Federal enforcement agencies may request a user to evaluate the individual components for adverse impact and may, where appropriate, take enforcement action with respect to the individual component.

D. *Adverse impact and the "four-fifths rule."* A selection rate for any race, sex, or ethnic group which is less than four-fifths (⅘) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact. Smaller differences in selection rate may nevertheless constitute adverse impact, where they are significant in both statistical and practical terms or where a user's actions have discouraged applicants disproportionately on grounds of race, sex, or ethnic group. Greater differences in selection rate may not constitute adverse impact where the differences are based on small numbers and are not statistically significant, or where special recruiting or other programs cause the pool of minority or female candidates to be atypical of the normal pool of applicants from that group. Where the user's evidence concerning the impact of a selection procedure indicates adverse impact but is based upon numbers which are too small to be reliable, evidence concerning the impact of the procedure over a longer period of time and/or evidence concerning the impact which the selection procedure had when used in the same manner in similar circumstances elsewhere may be considered in determining adverse impact. Where the user has not maintained data on adverse impact as required by the documentation section of applicable guidelines, the Federal enforcement agencies may draw an inference of adverse impact of the selection process from the failure of the user to maintain such data, if the user has an underutilization of a group in the job category, as compared to the group's representation in the relevant labor market or, in the case of jobs filled from within, the applicable work force.

E. *Consideration of user's equal employment opportunity posture.* In carrying out their obligations, the Federal enforcement agencies will consider the general posture of the user with respect to equal employment opportunity for the job or group of jobs in question. Where a user has adopted an affirmative action program, the Federal enforcement agencies will consider the provisions of that program, including the goals and timetables which the user has adopted and the progress which the user has made in carrying out that program and in meeting the goals and timetables. While such affirmative action programs may in design and execution be race, color, sex, or ethnic conscious, selection procedures under such programs should be based upon the ability or relative ability to do the work.

SEC. 5. *General standards for validity studies*—A. *Acceptable types of validity studies.* For the purposes of satisfying these guidelines, users may rely upon criterion-related validity studies, content validity studies or construct validity studies, in accordance with the standards set forth in the technical standards of these guidelines, section 14 below. New strategies for showing the validity of selection procedures will be evaluated as they become accepted by the psychological profession.

B. *Criterion-related, content, and construct validity.* Evidence of the validity of a test or other selection procedure by a criterion-related validity study should consist of empirical data demonstrating that the selection procedure is predictive of or significantly correlated with important elements of job performance. See section 14B below. Evidence of the validity of a test or other selection procedure by a content validity study should consist of data showing that the content of the selection procedure is representative of important aspects of performance on the job for which the candidates are to be evaluated. See section 14C below. Evidence of the validity of a test or other selection procedure through a construct validity study should consist of data showing that the procedure measures the degree to which candidates have identifiable characteristics which have been determined to be important in successful performance in the job for which the candidates are to be evaluated. See section 14D below.

C. *Guidelines are consistent with professional standards.* The provisions of these guidelines relating to validation of selection procedures are intended to be consistent with generally accepted professional standards for evaluating standardized tests and other selection procedures, such as those described in the Standards for Educational and Psychological Tests prepared by a joint committee of the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education (American Psychological Association, Washington, D.C., 1974) (hereinafter "A.P.A. Standards") and standard textbooks and journals in the field of personnel selection.

D. *Need for documentation of validity.* For any selection procedure which is part of a selection process which has an adverse impact and which selection procedure has an adverse impact, each user should maintain and have available such documentation as is described in section 15 below.

E. *Accuracy and standardization.* Validity studies should be carried out under conditions which assure insofar as possible the adequacy and accuracy of the research and the report. Selection procedures should be administered and scored under standardized conditions.

F. *Caution against selection on basis of knowledges, skills, or ability learned in brief orientation period.* In general, users should avoid making employment decisions on the basis of measures of knowledges, skills, or abilities which are normally learned in a brief orientation period, and which have an adverse impact.

G. *Method of use of selection procedures.* The evidence of both the validity and utility of a selection procedure should support the method the user chooses for operational use of the procedure, if that method of use has a greater adverse impact than another method of use. Evidence which may be sufficient to support the use of a selection procedure on a pass/fail (screening) basis may be insufficient to support the use of the same procedure on a ranking basis under these guidelines. Thus, if a user decides to use a selection procedure on a ranking basis, and that method of use has a greater adverse impact than use on an appropriate pass/fail basis (see section 5H below), the user should have sufficient evidence of validity and utility to support the use on a ranking basis. See sections 3B, 14B (5) and (6), and 14C (8) and (9).

H. *Cutoff scores.* Where cutoff scores are used, they should normally be set so as to be reasonable and consistent with normal expectations of acceptable proficiency within the work force. Where applicants are ranked on the basis of properly validated selection procedures and those applicants scoring below a higher cutoff score than appropriate in light of such expectations have little or no chance of being selected for employment, the higher cutoff score may be appropriate, but the degree of adverse impact should be considered.

I. *Use of selection procedures for higher level jobs.* If job progression structures are so established that employees will probably, within a reasonable period of time and in a majority of cases, progress to a higher level, it may be considered that the applicants are being evaluated for a job or jobs at the higher level. However, where job progression is not so nearly automatic, or the time span is such that higher level jobs or employees' potential may be expected to change in significant ways, it should be considered that applicants are being evaluated for a job at or near the entry level. A "reasonable period of time" will vary for different jobs and employment situations but will seldom be more than 5 years. Use of selection procedures to evaluate applicants for a higher level job would not be appropriate:

(1) If the majority of those remaining employed do not progress to the higher level job;

(2) If there is a reason to doubt that the higher level job will continue to require essentially similar skills during the progression period; or

(3) If the selection procedures measure knowledges, skills, or abilities required for advancement which would be expected to develop principally from the training or experience on the job.

J. *Interim use of selection procedures.* Users may continue the use of a selection procedure which is not at the moment fully supported by the required evidence of validity, provided: (1) The user has available substantial evidence of validity, and (2) the user has in progress, when technically feasible, a study which is designed to produce the additional evidence required by these guidelines within a reasonable time. If such a study is not technically feasible, see section 6B. If the study does not demonstrate validity, this provision of these guidelines for interim use shall not constitute a defense in any action, nor shall it relieve the user of any obligations arising under Federal law.

K. *Review of validity studies for currency.* Whenever validity has been shown in accord with these guidelines for the use of a particular selection procedure for a job or group of jobs, additional studies need not be performed until such time as the validity study is subject to review as provided in section 3B above. There are no absolutes in the area of determining the currency of a validity study. All circumstances concerning the study, including the validation strategy used, and changes in the relevant labor market and the job should be considered in the determination of when a validity study is outdated.

SEC. 6. *Use of selection procedures which have not been validated—*A. *Use of alternate selection procedures to eliminate adverse impact.* A user may choose to utilize alternative selection procedures in order to eliminate adverse impact or as part of an affirmative action program. See section 13 below. Such alternative procedures should eliminate the adverse impact in the total selection process, should be lawful and should be as job related as possible.

B. *Where validity studies cannot or need not be performed.* There are circumstances in which a user cannot or need not utilize the validation techniques contemplated by these guidelines. In such circumstances, the user should utilize selection procedures which are as job related as possible and which will minimize or eliminate adverse impact, as set forth below.

(1) *Where informal or unscored procedures are used.* When an informal or unscored selection procedure which has an adverse impact is utilized, the user should eliminate the adverse impact, or modify the procedure to one which is a formal, scored or quantified measure or combination of measures and then validate the procedure in accord with these guidelines, or otherwise justify continued use of the procedure in accord with Federal law.

(2) *Where formal and scored procedures are used.* When a formal and scored selection procedure is used which has an adverse impact, the validation techniques contemplated by these guidelines usually should be followed if technically feasible. Where the user cannot or need not follow the validation techniques anticipated by these guidelines, the user should either modify the procedure to eliminate adverse impact or otherwise justify continued use of the procedure in accord with Federal law.

SEC. 7. *Use of other validity studies*—A. *Validity studies not conducted by the user.* Users may, under certain circumstances, support the use of selection procedures by validity studies conducted by other users or conducted by test publishers or distributors and described in test manuals. While publishers of selection procedures have a professional obligation to provide evidence of validity which meets generally accepted professional standards (see section 5C above), users are cautioned that they are responsible for compliance with these guidelines. Accordingly, users seeking to obtain selection procedures from publishers and distributors should be careful to determine that, in the event the user becomes subject to the validity requirements of these guidelines, the necessary information to support validity has been determined and will be made available to the user.

B. *Use of criterion-related validity evidence from other sources.* Criterion-related validity studies conducted by one test user, or described in test manuals and the professional literature, will be considered acceptable for use by another user when the following requirements are met:

(1) *Validity evidence.* Evidence from the available studies meeting the standards of section 14B below clearly demonstrates that the selection procedure is valid;

(2) *Job similarity.* The incumbents in the user's job and the incumbents in the job or group of jobs on which the validity study was conducted perform substantially the same major work behaviors, as shown by appropriate job analyses both on the job or group of jobs on which the validity study was performed and on the job for which the selection procedure is to be used; and

(3) *Fairness evidence.* The studies include a study of test fairness for each race, sex, and ethnic group which constitutes a significant factor in the borrowing user's relevant labor market for the job or jobs in question. If the studies under consideration satisfy (1) and (2) above but do not contain an investigation of test fairness, and it is not technically feasible for the borrowing user to conduct an internal study of test fairness, the borrowing user may utilize the study until studies conducted elsewhere meeting the requirements of these guidelines show test unfairness, or until such time as it becomes technically feasible to conduct an internal study of test fairness and the results of that study can be acted upon. Users obtaining selection procedures from publishers should consider, as one factor in the decision to purchase a particular selection procedure, the availability of evidence concerning test fairness.

C. *Validity evidence from multiunit study.* If validity evidence from a study covering more than one unit within an organization statisfies the requirements of section 14B below, evidence of validity specific to each unit will not be required unless there are variables which are likely to affect validity significantly.

D. *Other significant variables.* If there are variables in the other studies which are likely to affect validity significantly, the user may not rely upon such studies, but will be expected either to conduct an internal validity study or to comply with section 6 above.

SEC. 8. *Cooperative studies*—A. *Encouragement of cooperative studies.* The agencies issuing these guidelines encourage employers, labor organizations, and employment agencies to cooperate in research, development, search for lawful alternatives, and validity studies in order to achieve procedures which are consistent with these guidelines.

B. *Standards for use of cooperative studies.* If validity evidence from a cooperative study satisfies the requirements of section 14 below, evidence of validity specific to each user will not be required unless there are variables in the user's situation which are likely to affect validity significantly.

SEC. 9. *No assumption of validity*—A. *Unacceptable substitutes for evidence of validity.* Under no circumstances will the general reputation of a test or other selection procedures, its author or its publisher, or casual reports of it's validity be accepted in lieu of evidence of validity. Specifically ruled out are: Assumptions of validity based on a procedure's name or descriptive labels; all forms of promotional literature; data bearing on the frequency of a procedure's usage; testimonial statements and credentials of sellers, users, or consultants; and other nonempirical or anecdotal accounts of selection practices or selection outcomes.

B. *Encouragement of professional supervision.* Professional supervision of selection activities is encouraged but is not a substitute for documented evidence of validity. The enforcement agencies will take into account the fact that a thorough job analysis was conducted and that careful development and use of a selection procedure in accordance with professional standards enhance the probability that the selection procedure is valid for the job.

SEC. 10. *Employment agencies and employment services—A. Where selection procedures are devised by agency.* An employment agency, including private employment agencies and State employment agencies, which agrees to a request by an employer or labor organization to device and utilize a selection procedure should follow the standards in these guidelines for determining adverse impact. If adverse impact exists the agency should comply with these guidelines. An employment agency is not relieved of its obligation herein because the user did not request such validation or has requested the use of some lesser standard of validation than is provided in these guidelines. The use of an employment agency does not relieve an employer or labor organization or other user of its responsibilities under Federal law to provide equal employment opportunity or its obligations as a user under these guidelines.

B. *Where selection procedures are devised elsewhere.* Where an employment agency or service is requested to administer a selection procedure which has been devised elsewhere and to make referrals pursuant to the results, the employment agency or service should maintain and have available evidence of the impact of the selection and referral procedures which it administers. If adverse impact results the agency or service should comply with these guidelines. If the agency or service seeks to comply with these guidelines by reliance upon validity studies or other data in the possession of the employer, it should obtain and have available such information.

SEC. 11. *Disparate treatment.* The principles of disparate or unequal treatment must be distinguished from the concepts of validation. A selection procedure—even though validated against job performance in accordance with these guidelines—cannot be imposed upon members of a race, sex, or ethnic group where other employees, applicants, or members have not been subjected to that standard. Disparate treatment occurs where members of a race, sex, or ethnic group have been denied the same employment, promotion, membership, or other employment opportunities as have been available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, the persons who were in the class of persons discriminated against during the period the user followed the discriminatory practices should be allowed the opportunity to qualify under less stringent selection procedures previously followed, unless the user demonstrates that the increased standards are required by business necessity. This section does not prohibit a user who has not previously followed merit standards from adopting merit standards which are in compliance with these guidelines; nor does it preclude a user who has previously used invalid or unvalidated selection procedures from developing and using procedures which are in accord with these guidelines.

SEC. 12. *Retesting of applicants.* Users should provide a reasonable opportunity for retesting and reconsideration. Where examinations are administered periodically with public notice, such reasonable opportunity exists, unless persons who have previously been tested are precluded from retesting. The user may however take reasonable steps to preserve the security of its procedures.

SEC. 13. *Affirmative action—A. Affirmative action obligations.* The use of selection procedures which have been validated pursuant to these guidelines does not relieve users of any obligations they may have to undertake affirmative action to assure equal employment opportunity. Nothing in these guidelines is intended to preclude the use of lawful selection procedures which assist in remedying the effects of prior discriminatory practices, or the achievement of affirmative action objectives.

B. *Encouragement of voluntary affirmative action programs.* These guidelines are also intended to encourage the adoption and implementation of voluntary affirmative action programs by users who have no obligation under Federal law to adopt them; but are not intended to impose any new obligations in that regard. The agencies issuing and endorsing these guidelines endorse for all private employers and reaffirm for all governmental employers the Equal Employment Opportunity Coordinating Council's "Policy Statement on Affirmative Action Programs for State and Local Government Agencies" (41 FR 38814, September 13, 1976). That policy statement is attached hereto as appendix, section 17.

TECHNICAL STANDARDS

SEC. 14. *Technical standards for validity studies.* The following minimum standards, as applicable, should be met in conducting a validity study. Nothing in these guidelines is intended to preclude the development and use of other professionally acceptable techniques with respect to validation of selection procedures. Where it is not technically feasible for a user to conduct a validity study, the user has the obligation otherwise to comply with these guidelines. See sections 6 and 7 above.

A. *Validity studies should be based on review of information about the job.* Any validity study should be based upon a review of information about the job for which the selection procedure is to be used. The review should include a job analysis except as provided in section 14B(3) below with respect to criterion-related validity. Any method of job analysis may be used if it provides the information required for the specific validation strategy used.

B. *Technical standards for criterion-related validity studies*—(1) *Technical feasibility.* Users choosing to validate a selection procedure by a criterion-related validity strategy should determine whether it is technically feasible (as defined in section 16) to conduct such a study in the particular employment context. The determination of the number of persons necessary to permit the conduct of a meaningful criterion-related study should be made by the user on the basis of all relevant information concerning the selection procedure, the potential sample and the employment situation. Where appropriate, jobs with substantially the same major work behaviors may be grouped together for validity studies, in order to obtain an adequate sample. These guidelines do not require a user to hire or promote persons for the purpose of making it possible to conduct a criterion-related study.

(2) *Analysis of the job.* There should be a review of job information to determine measures of work behavior(s) or performance that are relevant to the job or group of jobs in question. These measures or criteria are relevant to the extent that they represent critical or important job duties, work behaviors or work outcomes as developed from the review of job information. The possibility of bias should be considered both in selection of the criterion measures and their application. In view of the possibility of bias in subjective evaluations, supervisory rating techniques and instructions to raters should be carefully developed. All criterion measures and the methods for gathering data need to be examined for freedom from factors which would unfairly alter scores of members of any group. The relevance of criteria and their freedom from bias are of particular concern when there are significant differences in measures of job performance for different groups.

(3) *Criterion measures.* Proper safeguards should be taken to insure that scores on selection procedures do not enter into any judgments of employee adequacy that are to be used as criterion measures. Whatever criteria are used should represent important or critical work behavior(s) or work outcomes. Certain criteria may be used without a full job analysis if the user can show the importance of the criteria to the particular employment context. These criteria include but are not limited to production rate, error rate, tardiness, absenteeism, and length of service. A standardized rating of overall work performance may be used where a study of the job shows that it is an appropriate criterion. Where performance in training is used as a criterion, success in training should be properly measured and the relevance of the training should be shown either through a comparsion of the content of the training program with the critical or important work behavior(s) of the job(s), or through a demonstration of the relationship between measures of performance in training and measures of job performance. Measures of relative success in training include but are not limited to instructor evaluations, performance samples, or tests. Criterion measures consisting of paper and pencil tests will be closely reviewed for job relevance.

(4) *Representativeness of the sample.* Whether the study is predictive or concurrent, the sample subjects should insofar as feasible be representative of the candidates normally available in the relevant labor market for the job or group of jobs in question, and should insofar as feasible include the races, sexes, and ethnic groups normally available in the relevant job market. In determining the representativeness of the sample in a concurrent validity study, the user should take into account the extent to which the specific knowledges or skills which are the primary focus of the test are those which employees learn on the job.

Where samples are combined or compared, attention should be given to see that such samples are comparable in terms of the actual job they perform, the length of time on the job where time on the job is likely to affect performance, and other relevant factors likely to affect validity differences; or that these factors are included in the design of the study and their effects identified.

(5) *Statistical relationships.* The degree of relationship between selection procedure scores and criterion measures should be examined and computed, using professionally acceptable statistical procedures. Generally, a selection procedure is considered related to the criterion, for the purposes of these guidelines, when the relationship between performance on the procedure and performance on the criterion measure is statistically significant at the 0.05 level of significance, which means that it is sufficiently high as to have a probability of no more than one (1) in twenty (20) to have occurred by

chance. Absence of a statistically significant relationship between a selection procedure and job performance should not necessarily discourage other investigations of the validity of that selection procedure.

(6) *Operational use of selection procedures.* Users should evaluate each selection procedure to assure that it is appropriate for operational use, including establishment of cutoff scores or rank ordering. Generally, if other factors reman the same, the greater the magnitude of the relationship (e.g., correlation coefficent) between performance on a selection procedure and one or more criteria of performance on the job, and the greater the importance and number of aspects of job performance covered by the criteria, the more likely it is that the procedure will be appropriate for use. Reliance upon a selection procedure which is significantly related to a criterion measure, but which is based upon a study involving a large number of subjects and has a low correlation coefficient will be subject to close review if it has a large adverse impact. Sole reliance upon a single selection instrument which is related to only one of many job duties or aspects of job performance will also be subject to close review. The appropriateness of a selection procedure is best evaluated in each particular situation and there are no minimum correlation coefficients applicable to all employment situations. In determining whether a selection procedure is appropriate for operational use the following considerations should also be taken into account: The degree of adverse impact of the procedure, the availability of other selection procedures of greater or substantially equal validity.

(7) *Overstatement of validity findings.* Users should avoid reliance upon techniques which tend to overestimate validity findings as a result of capitalization on chance unless an appropriate safeguard is taken. Reliance upon a few selection procedures or criteria of successful job performance when many selection procedures or criteria of performance have been studied, or the use of optimal statistical weights for selection procedures computed in one sample, are techniques which tend to inflate validity estimates as a result of chance. Use of a large sample is one safeguard: Cross-validation is another.

(8) *Fairness.* This section generally calls for studies of unfairness where technically feasible. The concept of fairness or unfairness of selection procedures is a developing concept. In addition, fairness studies generally require substantial numbers of employees in the job or group of jobs being studied. For these reasons, the Federal enforcement agencies recognize that the obligation to conduct studies of fairness imposed by the guidelines generally will be upon users or groups of users with a large number of persons in a a job class, or test developers; and that small users utilizing their own selection procedures will generally not be obligated to conduct such studies because it will be technically infeasible for them to do so.

(a) *Unfairness defined.* When members of one race, sex, or ethnic group characteristically obtain lower scores on a selection procedure than members of another group, and the differences in scores are not reflected in differences in a measure of job performance, use of the selection procedure may unfairly deny opportunities to members of the group that obtains the lower scores.

(b) *Investigation of fairness.* Where a selection procedure results in an adverse impact on a race, sex, or ethnic group identified in accordance with the classifications set forth in section 4 above and that group is a significant factor in the relevant labor market, the user generally should investigate the possible existence of unfairness for that group if it is technically feasible to do so. The greater the severity of the adverse impact on a group, the greater the need to investigate the possible existence of unfairness. Where the weight of evidence from other studies shows that the selection procedure predicts fairly for the group in question and for the same or similar jobs, such evidence may be relied on in connection with the selection procedure at issue.

(c) *General considerations in fairness investigations.* Users conducting a study of fairness should review the A.P.A. Standards regarding investigation of possible bias in testing. An investigation of fairness of a selection procedure depends on both evidence of validity and the manner in which the selection procedure is to be used in a particular employment context. Fairness of a selection procedure cannot necessarily be specified in advance without investigating these factors. Investigation of fairness of a selection procedure in samples where the range of scores on selection procedures or criterion measures is severely restricted for any subgroup sample (as compared to other subgroup samples) may produce misleading evidence of unfairness. That factor should accordingly be taken into account in conducting such studies and before reliance is placed on the results.

(d) *When unfairness is shown.* If unfairness is demonstrated through a showing that members of a particular group perform better or poorer on the job than their scores on the selection procedure would indicate through comparison with how members of other groups perform, the user may either revise or replace the selection instrument in accordance with these guidelines, or may continue to use the selection instrument operationally with appropriate revisions in its use to assure compatibility between the probability of successful job performance and the probability of being selected.

(e) *Technical feasibility of fairness studies.* In addition to the general conditions needed for technical feasibility for the conduct of a criterion-related study (see section 16, below) an investigation of fairness requires the following:

(i) An adequate sample of persons in each group available for the study to achieve findings of statistical significance. Guidelines do not require a user to hire or promote persons on the basis of group classifications for the purpose of making it possible to conduct a study of fairness; but the user has the obligation otherwise to comply with these guidelines.

(ii) The samples for each group should be comparable in terms of the actual job they perform, length of time on the job where time on the job is likely to affect performance, and other relevant factors likely to affect validity differences; or such factors should be included in the design of the study and their effects identified.

(f) *Continued use of selection procedures when fairness studies not feasible.* If a study of fairness should otherwise be performed, but is not technically feasible, a selection procedure may be used which has otherwise met the validity standards of these guidelines, unless the technical infeasibility resulted from discriminatory employment practices which are demonstrated by facts other than past failure to conform with requirements for validation of selection procedures. However, when it becomes technically feasible for the user to perform a study of fairness and such a study is otherwise called for, the user should conduct the study of fairness.

C. *Technical standards for content validity studies*—(1) *Appropriateness of content validity studies.* Users choosing to validate a selection procedure by a content validity strategy should determine whether it is appropriate to conduct such a study in the particular employment context. A selection procedure can be supported by a content validity strategy to the extent that it is a representative sample of the content of the job. Selection procedures which purport to measure knowledges, skills, or abilities may in certain circumstances be justified by content validity, although they may not be representative samples, if the knowledge, skill, or ability measured by the selection procedure can be operationally defined as provided in section 14C(4) below, and if that knowledge, skill, or ability is a necessary prerequisite to successful job performance.

A selection procedure based upon inferences about mental processes cannot be supported solely or primarily on the basis of content validity. Thus, a content strategy is not appropriate for demonstrating the validity of selection procedures which purport to measure traits or constructs, such as intelligence, aptitude, personality, commonsense, judgment, leadership, and spatial ability. Content validity is also not an appropriate strategy when the selection procedure involves knowledges, skills, or abilities which an employee will be expected to learn on the job.

(2) *Job analysis for content validity.* There should be a job analysis which includes an analysis of the important work behavior(s) required for successful performance and their relative importance and, if the behavior results in work product(s), an analysis of the work product(s). Any job analysis should focus on the work behavior(s) and the tasks associated with them. If work behavior(s) are not observable, the job analysis should identify and analyze those aspects of the behavior(s) that can be observed and the observed work products. The work behavior(s) selected for measurement should be critical work behavior(s) and/or important work behavior(s) constituting most of the job.

(3) *Development of selection procedures.* A selection procedure designed to measure the work behavior may be developed specifically from the job and job analysis in question, or may have been previously developed by the user, or by other users or by a test publisher.

(4) *Standards for demonstrating content validity.* To demonstrate the content validity of a selection procedure, a user should show that the behavior(s) demonstrated in the selection procedure are a representative sample of the behavior(s) of the job in question or that the selection procedure provides a representative sample of the work product of the job. In the case of a selection procedure measuring a knowledge, skill, or ability, the knowledge, skill, or ability being measured should be operationally defined. In the case of a selection procedure measuring a knowledge, the knowledge being measured should be operationally defined as that body of learned information which is used in and is a necessary prerequisite for observable aspects of work behavior of the job. In the case of skills or abilities, the skill or ability being measured should be operationally defined in terms of observable aspects of work behavior of the job. For any selection procedure measuring a knowledge, skill, or ability the user should show that (a) the selection procedure measures and is a representative sample of that knowledge, skill, or ability; and (b) that knowledge, skill, or ability is used in and is a necessary prerequisite to performance of critical or important work behavior(s). In addition, to be content valid, a selection procedure measuring a skill or ability should either closely approximate an observable work behavior, or its product should closely approximate an ob-

servable work product. If a test purports to sample a work behavior or to provide a sample of a work product, the manner and setting of the selection procedure and its level and complexity should closely approximate the work situation. The closer the content and the context of the selection procedure are to work samples or work behaviors, the stronger is the basis for showing content validity. As the content of the selection procedure less resembles a work behavior, or the setting and manner of the administration of the selection procedure less resemble the work situation, or the result less resembles a work product, the less likely the selection procedure is to be content valid, and the greater the need for other evidence of validity.

(5) *Reliability.* The reliability of selection procedures justified on the basis of content validity should be a matter of concern to the user. Whenever it is feasible, appropriate statistical estimates should be made of the reliability of the selection procedure.

(6) *Prior training or experience.* A requirement for or evaluation of specific prior training or experience based on content validity, including a specification of level or amount of training or experience, should be justified on the basis of the relationship between the content of the training or experience and the content of the job for which the training or experience is to be required or evaluated. The critical consideration is the resemblance between the specific behaviors, products, knowledges, skills, or abilities in the experience or training and the specific behaviors, products, knowledges, skills, or abilities required on the job, whether or not there is close resemblance between the experience or training as a whole and the job as a whole.

(7) *Content validity of training success.* Where a measure of success in a training program is used as a selection procedure and the content of a training program is justified on the basis of content validity, the use should be justified on the relationship between the content of the training program and the content of the job.

(8) *Operational use.* A selection procedure which is supported on the basis of content validity may be used for a job if it represents a critical work behavior (i.e., a behavior which is necessary for performance of the job) or work behaviors which constitute most of the important parts of the job.

(9) *Ranking based on content validity studies.* If a user can show, by a job analysis or otherwise, that a higher score on a content valid selection procedure is likely to result in better job performance, the results may be used to rank persons who score above minimum levels. Where a selection procedure supported solely or primarily by content validity is used to rank job candidates, the selection procedure should measure those aspects of performance which differentiate among levels of job performance.

D. *Technical standards for construct validity studies*—(1) *Appropriateness of construct validity studies.* Construct validity is a more complex strategy than either criterion-related or content validity. Construct validation is a relatively new and developing procedure in the employment field, and there is at present a lack of substantial literature extending the concept to employment practices. The user should be aware that the effort to obtain sufficient empirical support for construct validity is both an extensive and arduous effort involving a series of research studies, which include criterion related validity studies and which may include content validity studies. Users choosing to justify use of a selection procedure by this strategy should therefore take particular care to assure that the validity study meets the standards set forth below.

(2) *Job analysis for construct validity studies.* There should be a job analysis. This job analysis should show the work behavior(s) required for successful performance of the job, or the groups of jobs being studied, the critical or important work behavior(s) in the job or group of jobs being studied, and an identification of the construct(s) believed to underlie successful performance of these critical or important work behaviors in the job or jobs in question. Each construct should be named and defined, so as to distinguish it from other constructs. If a group of jobs is being studied the jobs should have in common one or more critical or important work behaviors at a comparable level of complexity.

(3) *Relationship to the job.* A selection procedure should then be identified or developed which measures the construct identified in accord with paragraph (2) above. The user should show by empirical evidence that the selection procedure is validly related to the construct and that the construct is validly related to the performance of critical or important work behavior(s). The relationship between the construct as measured by the selection procedure and the related work behavior(s) should be supported by empirical evidence from one or more criterion-related studies involving the job or jobs in question which satisfy the provisions of section 14B above.

(4) *Use of construct validity study without new criterion-related evidence*—(a) *Standards for use.* Until such time as professional literature provides more guidance on the use of construct validity in employment situations, the Federal agencies will accept a claim of construct validity without a criterion-related study which satisfies section 14B above only when the selection procedure has been used elsewhere in a situation in which a criterion-related study has been

conducted and the use of a criterion-related validity study in this context meets the standards for transportability of criterion-related validity studies as set forth above in section 7. However, if a study pertains to a number of jobs having common critical or important work behavior at a comparable level of complexity, and the evidence satisfies paragraphs 14B (2) and (3) above for those jobs with criterion-related validity evidence for those jobs, the selection procedure may be used for all the jobs to which the study pertains. If construct validity is to be generalized to other jobs or groups of jobs not in the group studied, the Federal enforcement agencies will expect at a minimum additional empirical research evidence meeting the standards of paragraphs section 14B (2) and (3) above for the additional jobs or groups of jobs.

(b) *Determination of common work behaviors.* In determining whether two or more jobs have one or more work behavior(s) in common, the user should compare the observed work behavior(s) in each of the jobs and should compare the observed work product(s) in each of the jobs. If neither the observed work behavior(s) in each of the jobs nor the observed work product(s) in each of the jobs are the same, the Federal enforcement agencies will presume that the work behavior(s) in each job are different. If the work behaviors are not observable, then evidence of similarity of work products and any other relevant research evidence will be considered in determining whether the work behavior(s) in the two jobs are the same.

DOCUMENTATION OF IMPACT AND VALIDITY EVIDENCE

SEC. 15. *Documentation of impact and validity evidence—*A. *Required information.* Users of selection procedures other than those users complying with section 15A(1) below should maintain and have available for each job information on adverse impact of the selection process for that job and, where it is determined a selection process has an adverse impact, evidence of validity as set forth below.

(1) *Simplified recordkeeping for users with less than 100 employees.* In order to minimize recordkeeping burdens on employers who employ one hundred (100) or fewer employees, and other users not required to file EEO-1, et seq., reports, such users may satisfy the requirements of this section 15 if they maintain and have available records showing, for each year:

(a) The number of persons hired, promoted, and terminated for each job, by sex, and where appropriate by race and national origin;

(b) The number of applicants for hire and promotion by sex and where appropriate by race and national origin; and

(c) The selection procedures utilized (either standardized or not standardized).

These records should be maintained for each race or national origin group (see section 4 above) constituting more than two percent (2%) of the labor force in the relevant labor area. However, it is not necessary to maintain records by race and/or national origin (see section 4 above) if one race or national origin group in the relevant labor area constitutes more than ninety-eight percent (98%) of the labor force in the area. If the user has reason to believe that a selection procedure has an adverse impact, the user should maintain any available evidence of validity for that procedure (see sections 7A and 8).

(2) *Information on impact—*(a) *Collection of information on impact.* Users of selection procedures other than those complying with section 15A(1) above should maintain and have available for each job records or other information showing whether the total selection process for that job has an adverse impact on any of the groups for which records are called for by sections 4B above. Adverse impact determinations should be made at least annually for each such group which constitutes at least 2 percent of the labor force in the relevant labor area or 2 percent of the applicable workforce. Where a total selection process for a job has an adverse impact, the user should maintain and have available records or other information showing which components have an adverse impact. Where the total selection process for a job does not have an adverse impact, information need not be maintained for individual components except in circumstances set forth in subsection 15A(2)(b) below. If the determination of adverse impact is made using a procedure other than the "four-fifths rule," as defined in the first sentence of section 4D above, a justification, consistent with section 4D above, for the procedure used to determine adverse impact should be available.

(b) *When adverse impact has been eliminated in the total selection process.* Whenever the total selection process for a particular job has had an adverse impact, as defined in section 4 above, in any year, but no longer has an adverse impact, the user should maintain and have available the information on individual components of the selection process required in the preceding paragraph for the period in which there was adverse impact. In addition, the user should continue to collect such information for at least two (2) years after the adverse impact has been eliminated.

(c) *When data insufficient to determine impact.* Where there has been an insufficient number of selections to determine whether there is an adverse impact of the total selection process for a particular job, the user should continue to collect, maintain and have available the information on individual components of the selection process required in section 15(A)(2)(a) above until the information is sufficient to determine that the overall selection process does not have an adverse impact as defined in section 4 above, or until the job has changed substantially.

(3) *Documentation of validity evidence*—(a) *Types of evidence.* Where a total selection process has an adverse impact (see section 4 above) the user should maintain and have available for each component of that process which has an adverse impact, one or more of the following types of documentation evidence:

(i) Documentation evidence showing criterion-related validity of the selection procedure (see section 15B, below).

(ii) Documentation evidence showing content validity of the selection procedure (see section 15C, below).

(iii) Documentation evidence showing construct validity of the selection procedure (see section 15D, below).

(iv) Documentation evidence from other studies showing validity of the selection procedure in the user's facility (see section 15E, below).

(v) Documentation evidence showing why a validity study cannot or need not be performed and why continued use of the procedure is consistent with Federal law.

(b) *Form of report.* This evidence should be compiled in a reasonably complete and organized manner to permit direct evaluation of the validity of the selection procedure. Previously written employer or consultant reports of validity, or reports describing validity studies completed before the issuance of these guidelines are acceptable if they are complete in regard to the documentation requirements contained in this section, or if they satisfied requirements of guidelines which were in effect when the validity study was completed. If they are not complete, the required additional documentation should be appended. If necessary information is not available the report of the validity study may still be used as documentation, but its adequacy will be evaluated in terms of compliance with the requirements of these guidelines.

(c) *Completeness.* In the event that evidence of validity is reviewed by an enforcement agency, the validation reports completed after the effective date of these guidelines are expected to contain the information set forth below. Evidence denoted by use of the word "(Essential)" is considered critical. If information denoted essential is not included, the report will be considered incomplete unless the user affirmatively demonstrates either its unavailability due to circumstances beyond the user's control or special circumstances of the user's study which make the information irrelevant. Evidence not so denoted is desirable but its absence will not be a basis for considering a report incomplete. The user should maintain and have available the information called for under the heading "Source Data" in sections 15B(11) and 15D(11). While it is a necessary part of the study, it need not be submitted with the report. All statistical results should be organized and presented in tabular or graphic form to the extent feasible.

B. *Criterion-related validity studies.* Reports of criterion-related validity for a selection procedure should include the following information:

(1) *User(s), location(s), and date(s) of study.* Dates and location(s) of the job analysis or review of job information, the date(s) and location(s) of the administration of the selection procedures and collection of criterion data, and the time between collection of data on selection procedures and criterion measures should be provided (Essential). If the study was conducted at several locations, the address of each location, including city and State, should be shown.

(2) *Problem and setting.* An explicit definition of the purpose(s) of the study and the circumstances in which the study was conducted should be provided. A description of existing selection procedures and cutoff scores, if any, should be provided.

(3) *Job analysis or review of job information.* A description of the procedure used to analyze the job or group of jobs, or to review the job information should be provided (Essential). Where a review of job information results in criteria which may be used without a full job analysis (see section 14B(3)), the basis for the selection of these criteria should be reported (Essential). Where a job analysis is required a complete description of the work behavior(s) or work outcome(s), and measures of their criticality or importance should be provided (Essential). The report should describe the basis on which the behavior(s) or outcome(s) were determined to be critical or important, such as the proportion of time spent on the respective behaviors, their level of difficulty, their frequency of performance, the consequences of error, or other appropriate factors (Essential). Where two or more jobs are grouped for a validity study, the information called for in this subsection should be provided for each of the jobs, and the justification for the grouping (see section 14B(1)) should be provided (Essential).

(4) *Job titles and codes.* It is desirable to provide the user's job title(s) for the job(s) in question and the corresponding job

title(s) and code(s) from U.S. Employment Service's Dictionary of Occupational Titles.

(5) *Criterion measures.* The bases for the selection of the criterion measures should be provided, together with references to the evidence considered in making the selection of criterion measures (essential). A full description of all criteria on which data were collected and means by which they were observed, recorded, evaluated, and quantified, should be provided (essential). If rating techniques are used as criterion measures, the appraisal form(s) and instructions to the rater(s) should be included as part of the validation evidence, or should be explicitly described and available (essential). All steps taken to insure that criterion measures are free from factors which would unfairly alter the scores of members of any group should be described (essential).

(6) *Sample description.* A description of how the research sample was identified and selected should be included (essential). The race, sex, and ethnic composition of the sample, including those groups set forth in section 4A above, should be described (essential). This description should include the size of each subgroup (essential). A description of how the research sample compares with the relevant labor market or work force, the method by which the relevant labor market or work force was defined, and a discussion of the likely effects on validity of differences between the sample and the relevant labor market or work force, are also desirable. Descriptions of educational levels, length of service, and age are also desirable.

(7) *Description of selection procedures.* Any measure, combination of measures, or procedure studied should be completely and explicitly described or attached (essential). If commercially available selection procedures are studied, they should be described by title, form, and publisher (essential). Reports of reliability estimates and how they were established are desirable.

(8) *Techniques and results.* Methods used in analyzing data should be described (essential). Measures of central tendency (e.g., means) and measures of dispersion (e.g., standard deviations and ranges) for all selection procedures and all criteria should be reported for each race, sex, and ethnic group which constitutes a significant factor in the relevant labor market (essential). The magnitude and direction of all relationships between selection procedures and criterion measures investigated should be reported for each relevant race, sex, and ethnic group and for the total group (essential). Where groups are too small to obtain reliable evidence of the magnitude of the relationship, need not be reported separately. Statements regarding the statistical significance of results should be made (essential). Any statistical adjustments, such as for less then perfect reliability or for restriction of score range in the selection procedure or criterion should be described and explained; and uncorrected correlation coefficients should also be shown (essential). Where the statistical technique categorizes continuous data, such as biserial correlation and the phi coefficient, the categories and the bases on which they were determined should be described and explained (essential). Studies of test fairness should be included where called for by the requirements of section 14B(8) (essential). These studies should include the rationale by which a selection procedure was determined to be fair to the group(s) in question. Where test fairness or unfairness has been demonstrated on the basis of other studies, a bibliography of the relevant studies should be included (essential). If the bibliography includes unpublished studies, copies of these studies, or adequate abstracts or summaries, should be attached (essential). Where revisions have been made in a selection procedure to assure compatability between successful job performance and the probability of being selected, the studies underlying such revisions should be included (essential). All statistical results should be organized and presented by relevant race, sex, and ethnic group (essential).

(9) *Alternative procedures investigated.* The selection procedures investigated and available evidence of their impact should be identified (essential). The scope, method, and findings of the investigation, and the conclusions reached in light of the findings, should be fully described (essential).

(10) *Uses and applications.* The methods considered for use of the selection procedure (e.g., as a screening device with a cutoff score, for grouping or ranking, or combined with other procedures in a battery) and available evidence of their impact should be described (essential). This description should include the rationale for choosing the method for operational use, and the evidence of the validity and utility of the procedure as it is to be used (essential). The purpose for which the procedure is to be used (e.g., hiring, transfer, promotion) should be described (essential). If weights are assigned to different parts of the selection procedure, these weights and the validity of the weighted composite should be reported (essential). If the selection procedure is used with a cutoff score, the user should describe the way in which normal expectations of proficiency within the work force were determined and the way in which the cutoff score was determined (essential).

(11) *Source data.* Each user should maintain records showing all pertinent information about individual sample members and raters where they are used, in studies involving the validation of selection proce-

dures. These records should be made available upon request of a compliance agency. In the case of individual sample members these data should include scores on the selection procedure(s), scores on criterion measures, age, sex, race, or ethnic group status, and experience on the specific job on which the validation study was conducted, and may also include such things as education, training, and prior job experience, but should not include names and social security numbers. Records should be maintained which show the ratings given to each sample member by each rater.

(12) *Contact person.* The name, mailing address, and telephone number of the person who may be contacted for further information about the validity study should be provided (essential).

(13) *Accuracy and completeness.* The report should describe the steps taken to assure the accuracy and completeness of the collection, analysis, and report of data and results.

C. *Content validity studies.* Reports of content validity for a selection procedure should include the following information:

(1) *User(s), location(s) and date(s) of study.* Dates and location(s) of the job analysis should be shown (essential).

(2) *Problem and setting.* An explicit definition of the purpose(s) of the study and the circumstances in which the study was conducted should be provided. A description of existing selection procedures and cutoff scores, if any, should be provided.

(3) *Job analysis—Content of the job.* A description of the method used to analyze the job should be provided (essential). The work behavior(s), the associated tasks, and, if the behavior results in a work product, the work products should be completely described (essential). Measures of criticality and/or importance of the work behavior(s) and the method of determining these measures should be provided (essential). Where the job analysis also identified the knowledges, skills, and abilities used in work behavior(s), an operational definition for each knowledge in terms of a body of learned information and for each skill and ability in terms of observable behaviors and outcomes, and the relationship between each knowledge, skill, or ability and each work behavior, as well as the method used to determine this relationship, should be provided (essential). The work situation should be described, including the setting in which work behavior(s) are performed, and where appropriate, the manner in which knowledges, skills, or abilities are used, and the complexity and difficulty of the knowledge, skill, or ability as used in the work behavior(s).

(4) *Selection procedure and its content.* Selection procedures, including those constructed by or for the user, specific training requirements, composites of selection procedures, and any other procedure supported by content validity, should be completely and explicitly described or attached (essential). If commercially available selection procedures are used, they should be described by title, form, and publisher (essential). The behaviors measured or sampled by the selection procedure should be explicitly described (essential). Where the selection procedure purports to measure a knowledge, skill, or ability, evidence that the selection procedure measures and is a representative sample of the knowledge, skill, or ability should be provided (essential).

(5) *Relationship between the selection procedure and the job.* The evidence demonstrating that the selection procedure is a representative work sample, a representative sample of the work behavior(s), or a representative sample of a knowledge, skill, or ability as used as a part of a work behavior and necessary for that behavior should be provided (essential). The user should identify the work behavior(s) which each item or part of the selection procedure is intended to sample or measure (essential). Where the selection procedure purports to sample a work behavior or to provide a sample of a work product, a comparison should be provided of the manner, setting, and the level of complexity of the selection procedure with those of the work situation (essential). If any steps were taken to reduce adverse impact on a race, sex, or ethnic group in the content of the procedure or in its administration, these steps should be described. Establishment of time limits, if any, and how these limits are related to the speed with which duties must be performed on the job, should be explained. Measures of central tend- ency (e.g., means) and measures of dispersion (e.g., standard deviations) and estimates of realibility should be reported for all selection procedures if available. Such reports should be made for relevant race, sex, and ethnic subgroups, at least on a statistically reliable sample basis.

(6) *Alternative procedures investigated.* The alternative selection procedures investigated and available evidence of their impact should be identified (essential). The scope, method, and findings of the investigation, and the conclusions reached in light of the findings, should be fully described (essential).

(7) *Uses and applications.* The methods considered for use of the selection procedure (e.g., as a screening device with a cutoff score, for grouping or ranking, or combined with other procedures in a battery) and available evidence of their impact should be described (essential). This description should include the rationale for choosing the method for operational use, and the evidence of the validity and utility of the

procedure as it is to be used (essential). The purpose for which the procedure is to be used (e.g., hiring, transfer, promotion) should be described (essential). If the selection procedure is used with a cutoff score, the user should describe the way in which normal expectations of proficiency within the work force were determined and the way in which the cutoff score was determined (essential). In addition, if the selection procedure is to be used for ranking, the user should specify the evidence showing that a higher score on the selection procedure is likely to result in better job performance.

(8) *Contact person.* The name, mailing address, and telephone number of the person who may be contacted for further information about the validity study should be provided (essential).

(9) *Accuracy and completeness.* The report should describe the steps taken to assure the accuracy and completeness of the collection, analysis, and report of data and results.

D. *Construct validity studies.* Reports of construct validity for a selection procedure should include the following information:

(1) *User(s), location(s), and date(s) of study.* Date(s) and location(s) of the job analysis and the gathering of other evidence called for by these guidelines should be provided (essential).

(2) *Problem and setting.* An explicit definition of the purpose(s) of the study and the circumstances in which the study was conducted should be provided. A description of existing selection procedures and cutoff scores, if any, should be provided.

(3) *Construct definition.* A clear definition of the construct(s) which are believed to underlie successful performance of the critical or important work behavior(s) should be provided (essential). This definition should include the levels of construct performance relevant to the job(s) for which the selection procedure is to be used (essential). There should be a summary of the position of the construct in the psychological literature, or in the absence of such a position, a description of the way in which the definition and measurement of the construct was developed and the psychological theory underlying it (essential). Any quantitative data which identify or define the job constructs, such as factor analyses, should be provided (essential).

(4) *Job analysis.* A description of the method used to analyze the job should be provided (essential). A complete description of the work behavior(s) and, to the extent appropriate, work outcomes and measures of their criticality and/or importance should be provided (essential). The report should also describe the basis on which the behavior(s) or outcomes were determined to be important, such as their level of difficulty, their frequency of performance, the consequences of error or other appropriate factors (essential). Where jobs are grouped or compared for the purposes of generalizing validity evidence, the work behavior(s) and work product(s) for each of the jobs should be described, and conclusions concerning the similarity of the jobs in terms of observable work behaviors or work products should be made (essential).

(5) *Job titles and codes.* It is desirable to provide the selection procedure user's job title(s) for the job(s) in question and the corresponding job title(s) and code(s) from the United States Employment Service's dictionary of occupational titles.

(6) *Selection procedure.* The selection procedure used as a measure of the construct should be completely and explicitly described or attached (essential). If commercially available selection procedures are used, they should be identified by title, form and publisher (essential). The research evidence of the relationship between the selection procedure and the construct, such as factor structure, should be included (essential). Measures of central tendency, variability and reliability of the selection procedure should be provided (essential). Whenever feasible, these measures should be provided separately for each relevant race, sex and ethnic group.

(7) *Relationship to job performance.* The criterion-related study(ies) and other empirical evidence of the relationship between the construct measured by the selection procedure and the related work behavior(s) for the job or jobs in question should be provided (essential). Documentation of the criterion-related study(ies) should satisfy the provisions of section 15B above or section 15E(1) below, except for studies conducted prior to the effective date of these guidelines (essential). Where a study pertains to a group of jobs, and, on the basis of the study, validity is asserted for a job in the group, the observed work behaviors and the observed work products for each of the jobs should be described (essential). Any other evidence used in determining whether the work behavior(s) in each of the jobs is the same should be fully described (essential).

(8) *Alternative procedures investigated.* The alternative selection procedures investigated and available evidence of their impact should be identified (essential). The scope, method, and findings of the investigation, and the conclusions reached in light of the findings should be fully described (essential).

(9) *Uses and applications.* The methods considered for use of the selection procedure (e.g., as a screening device with a cutoff score, for grouping or ranking, or combined with other procedures in a bat-

tery) and available evidence of their impact should be described (essential). This description should include the rationale for choosing the method for operational use, and the evidence of the validity and utility of the procedure as it is to be used (essential). The purpose for which the procedure is to be used (e.g., hiring, transfer, promotion) should be described (essential). If weights are assigned to different parts of the selection procedure, these weights and the validity of the weighted composite should be reported (essential). If the selection procedure is used with a cutoff score, the user should describe the way in which normal expectations of proficiency within the work force were determined and the way in which the cutoff score was determined (essential).

(10) *Accuracy and completeness.* The report should describe the steps taken to assure the accuracy and completeness of the collection, analysis, and report of data and results.

(11) *Source data.* Each user should maintain records showing all pertinent information relating to its study of construct validity.

(12) *Contact person.* The name, mailing address, and telephone number of the individual who may be contacted for further information about the validity study should be provided (essential).

E. *Evidence of validity from other studies.* When validity of a selection procedure is supported by studies not done by the user, the evidence from the original study or studies should be compiled in a manner similar to that required in the appropriate section of this section 15 above. In addition, the following evidence should be supplied:

(1) *Evidence from criterion-related validity studies*—a. *Job information.* A description of the important job behavior(s) of the user's job and the basis on which the behaviors were determined to be important should be provided (essential). A full description of the basis for determining that these important work behaviors are the same as those of the job in the original study (or studies) should be provided (essential).

b. *Relevance of criteria.* A full description of the basis on which the criteria used in the original studies are determined to be relevant for the user should be provided (essential).

c. *Other variables.* The similarity of important applicant pool or sample characteristics reported in the original studies to those of the user should be described (essential). A description of the comparison between the race, sex and ethnic composition of the user's relevant labor market and the sample in the original validity studies should be provided (essential).

d. *Use of the selection procedure.* A full description should be provided showing that the use to be made of the selection procedure is consistent with the findings of the original validity studies (essential).

e. *Bibliography.* A bibliography of reports of validity of the selection procedure for the job or jobs in question should be provided (essential). Where any of the studies included an investigation of test fairness, the results of this investigation should be provided (essential). Copies of reports published in journals that are not commonly available should be described in detail or attached (essential). Where a user is relying upon unpublished studies, a reasonable effort should be made to obtain these studies. If these unpublished studies are the sole source of validity evidence they should be described in detail or attached (essential). If these studies are not available, the name and address of the source, an adequate abstract or summary of the validity study and data, and a contact person in the source organization should be provided (essential).

(2) *Evidence from content validity studies.* See section 14C(3) and section 15C above.

(3) *Evidence from construct validity studies.* See sections 14D(2) and 15D above.

F. *Evidence of validity from cooperative studies.* Where a selection procedure has been validated through a cooperative study, evidence that the study satisfies the requirements of sections 7, 8 and 15E should be provided (essential).

G. *Selection for higher level job.* If a selection procedure is used to evaluate candidates for jobs at a higher level than those for which they will initially be employed, the validity evidence should satisfy the documentation provisions of this section 15 for the higher level job or jobs, and in addition, the user should provide: (1) A description of the job progression structure, formal or informal; (2) the data showing how many employees progress to the higher level job and the length of time needed to make this progression; and (3) an identification of any anticipated changes in the higher level job. In addition, if the test measures a knowledge, skill or ability, the user should provide evidence that the knowledge, skill or ability is required for the higher level job and the basis for the conclusion that the knowledge, skill or ability is not expected to develop from the training or experience on the job.

H. *Interim use of selection procedures.* If a selection procedure is being used on an interim basis because the procedure is not fully supported by the required evidence of validity, the user should maintain and have available (1) substantial evidence of validity for the procedure, and (2) a report showing the date on which the study to gather the additional evidence commenced, the estimated completion date of the study, and a description of the data to be collected (essential).

DEFINITIONS

SEC. 16. *Definitions.* The following definitions shall apply throughout these guidelines:

A. *Ability.* A present competence to perform an observable behavior or a behavior which results in an observable product.

B. *Adverse impact.* A substantially different rate of selection in hiring, promotion, or other employment decision which works to the disadvantage of members of a race, sex, or ethnic group. See section 4 of these guidelines.

C. *Compliance with these guidelines.* Use of a selection procedure is in compliance with these guidelines if such use has been validated in accord with these guidelines (as defined below), or if such use does not result in adverse impact on any race, sex, or ethnic group (see section 4, above), or, in unusual circumstances, if use of the procedure is otherwise justified in accord with Federal law. See section 6B, above.

D. *Content validity.* Demonstrated by data showing that the content of a selection procedure is representative of important aspects of performance on the job. See section 5B and section 14C.

E. *Construct validity.* Demonstrated by data showing that the selection procedure measures the degree to which candidates have identifiable characteristics which have been determined to be important for successful job performance. See section 5B and section 14D.

F. *Criterion-related validity.* Demonstrated by empirical data showing that the selection procedure is predictive of or significantly correlated with important elements of work behavior. See sections 5B and 14B.

G. *Employer.* Any employer subject to the provisions of the Civil Rights Act of 1964, as amended, including State or local governments and any Federal agency subject to the provisions of section 717 of the Civil Rights Act of 1964, as amended, and any Federal contractor or subcontractor or federally assisted construction contractor or subcontactor covered by Executive Order 11246, as amended.

H. *Employment agency.* Any employment agency subject to the provisions of the Civil Rights Act of 1964, as amended.

I. *Enforcement action.* For the purposes of section 4 a proceeding by a Federal enforcement agency such as a lawsuit or an administrative proceeding leading to debarment from or withholding, suspension, or termination of Federal Government contracts or the suspension or withholding of Federal Government funds; but not a finding of reasonable cause or a concil- ation process or the issuance of right to sue letters under Title VII or under Executive Order 11246 where such finding, conciliation, or issuance of notice of right to sue is based upon an individual complaint.

J. *Enforcement agency.* Any agency of the executive branch of the Federal Government which adopts these guidelines for purposes of the enforcement of the equal employment opportunity laws or which has responsibility for securing compliance with them.

K. *Job analysis.* A detailed statement of work behaviors and other information relevant to the job.

L. *Job description.* A general statement of job duties and responsibilities.

M. *Knowledge.* A body of information applied directly to the performance of a function.

N. *Labor organization.* Any labor organization subject to the provisions of the Civil Rights Act of 1964, as amended, and any committee subject thereto controlling apprenticeship or other training.

O. *Observable.* Able to be seen, heard, or otherwise perceived by a person other than the person performing the action.

P. *Race, sex, or ethnic group.* Any group of persons identifiable on the grounds of race, color, religion, sex, or national origin.

Q. *Selection procedure.* Any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs, or probationary periods and physical, educational, and work experience requirements through informal or casual interviews and unscored application forms.

R. *Selection rate.* The proportion of applicants or candidates who are hired, promoted, or otherwise selected.

S. *Should.* The term "should" as used in these guidelines is intended to connote action which is necessary to achieve compliance with the guidelines, while recognizing that there are circumstances where alternative courses of action are open to users.

T. *Skill.* A present, observable competence to perform a learned psychomoter act.

U. *Technical feasibility.* The exist- ence of conditions permitting the conduct of meaningful criterion-related validity studies. These conditions include: (1) An adequate sample of persons available for the study to achieve findings of statistical significance; (2) having or being able to obtain a sufficient range of scores on the selection procedure and job performance measures to produce validity results which can be expected to be representative of the results if the ranges normally expected were utilized; and (3) having or being able to devise unbiased, reliable and relevant measures of job performance or other criteria of employee adequacy. See section 14B(2). With respect to investigation of possible unfairness, the same considerations are applicable to each group for which the study is made. See section 14B(8).

V. *Unfairness of selection procedure.* A condition in which members of one race, sex, or ethnic group characteristically obtain lower scores on a selection procedure than members of another group, and the differences are not reflected in differences in measures of job performance. See section 14B(7).

W. *User.* Any employer, labor organization, employment agency, or licensing or certification board, to the extent it may be covered by Federal equal employment opportunity law, which uses a selection procedure as a basis for any employment decision. Whenever an employer, labor organization, or employment agency is required by law to restrict recruitment for any occupation to those applicants who have met licensing or certification requirements, the licensing or certifying authority to the extent it may be covered by Federal equal employment opportunity law will be considered the user with respect to those licensing or certification requirements. Whenever a State employment agency or service does no more than administer or monitor a procedure as permitted by Department of Labor regulations, and does so without making referrals or taking any other action on the basis of the results, the State employment agency will not be deemed to be a user.

X. *Validated in accord with these guidelines or properly validated.* A demonstration that one or more validity study or studies meeting the standards of these guidelines has been conducted, including investigation and, where appropriate, use of suitable alternative selection procedures as contemplated by section 3B, and has produced evidence of validity sufficient to warrant use of the procedure for the intended purpose under the standards of these guidelines.

Y. *Work behavior.* An activity performed to achieve the objectives of the job. Work behaviors involve observable (physical) components and unobservable (mental) components. A work behavior consists of the performance of one or more tasks. Knowledges, skills, and abilities are not behaviors, although they may be applied in work behaviors.

APPENDIX

17. *Policy statement on affirmative action* (see section 13B). The Equal Employment Opportunity Coordinating Council was established by act of Congress in 1972, and charged with responsibility for developing and implementing agreements and policies designed, among other things, to eliminate conflict and inconsistency among the agencies of the Federal Government responsible for administering Federal law prohibiting discrimination on grounds of race, color, sex, religion, and national origin. This statement is issued as an initial response to the requests of a number of State and local officials for clarification of the Government's policies concerning the role of affirmative action in the overall equal employment opportunity program. While the Coordinating Council's adoption of this statement expresses only the views of the signatory agencies concerning this important subject, the principles set forth below should serve as policy guidance for other Federal agencies as well.

(1) Equal employment opportunity is the law of the land. In the public sector of our society this means that all persons, regardless of race, color, religion, sex, or national origin shall have equal access to positions in the public service limited only by their ability to do the job. There is ample evidence in all sectors of our society that such equal access frequently has been denied to members of certain groups because of their sex, racial, or ethnic characteristics. The remedy for such past and present discrimination is twofold.

On the one hand, vigorous enforcement of the laws against discrimination is essential. But equally, and perhaps even more important are affirmative, voluntary efforts on the part of public employers to assure that positions in the public service are genuinely and equally accessible to qualified persons, without regard to their sex, racial, or ethnic characteristics. Without such efforts equal employment opportunity is no more than a wish. The importance of voluntary affirmative action on the part of employers is underscored by Title VII of the Civil Rights Act of 1964, Executive Order 11246, and related laws and regulations—all of which emphasize voluntary action to achieve equal employment opportunity.

As with most management objectives, a systematic plan based on sound organizational analysis and problem identification is crucial to the accomplishment of affirmative action objectives. For this reason, the Council urges all State and local governments to develop and implement results oriented affirmative action plans which deal with the problems so identified.

The following paragraphs are intended to assist State and local governments by illustrating the kinds of analyses and activities which may be appropriate for a public employer's voluntary affirmative action plan. This statement does not address remedies imposed after a finding of unlawful discrimination.

(2) Voluntary affirmative action to assure equal employment opportunity is appropriate at any stage of the employment process. The first step in the construction of any affirmative action plan should be an analysis

of the employer's work force to determine whether percentages of sex, race, or ethnic groups in individual job classifications are substantially similar to the percentages of those groups available in the relevant job market who possess the basic job-related qualifications.

When substantial disparities are found through such analyses, each element of the overall selection process should be examined to determine which elements operate to exclude persons on the basis of sex, race, or ethnic group. Such elements include, but are not limited to, recruitment, testing, ranking certification, interview, recommendations for selection, hiring, promotion, etc. The examination of each element of the selection process should at a minimum include a determination of its validity in predicting job performance.

(3) When an employer has reason to believe that its selection procedures have the exclusionary effect described in paragraph 2 above, it should initiate affirmative steps to remedy the situation. Such steps, which in design and execution may be race, color, sex, or ethnic "conscious," include, but are not limited to, the following:

(a) The establishment of a long-term goal, and short-range, interim goals and timetables for the specific job classifications, all of which should take into account the availability of basically qualified persons in the relevant job market;

(b) A recruitment program designed to attract qualified members of the group in question;

(c) A systematic effort to organize work and redesign jobs in ways that provide opportunities for persons lacking "journeyman" level knowledge or skills to enter and, with appropriate training, to progress in a career field;

(d) Revamping selection instruments or procedures which have not yet been validated in order to reduce or eliminate exclusionary effects on particular groups in particular job classifications;

(e) The initiation of measures designed to assure that members of the affected group who are qualified to perform the job are included within the pool of persons from which the selecting official makes the selection;

(f) A systematic effort to provide career advancement training, both classroom and on-the-job, to employees locked into dead end jobs; and

(g) The establishment of a system for regularly monitoring the effectiveness of the particular affirmative action program, and procedures for making timely adjustments in this program where effectiveness is not demonstrated.

(4) The goal of any affirmative action plan should be achievement of genuine equal employment opportunity for all qualified persons. Selection under such plans should be based upon the ability of the applicant(s) to do the work. Such plans should not require the selection of the unqualified, or the unneeded, nor should they require the selection of persons on the basis of race, color, sex, religion, or national origin. Moreover, while the Council believes that this statement should serve to assist State and local employers, as well as Federal agencies, it recognizes that affirmative action cannot be viewed as a standardized program which must be accomplished in the same way at all times in all places.

Accordingly, the Council has not attempted to set forth here either the minimum or maximum voluntary steps that employers may take to deal with their respective situations. Rather, the Council recognizes that under applicable authorities, State and local employers have flexibility to formulate affirmative action plans that are best suited to their particular situations. In this manner, the Council believes that affirmative action programs will best serve the goal of equal employment opportunity.

Respectfully submitted,

Harold R. Tyler, Jr.,
Deputy Attorney General and Chairman of the Equal Employment Coordinating Council.

Michael H. Moskow,
Under Secretary of Labor.

Ethel Bent Walsh,
Acting Chairman, Equal Employment Opportunity Commission.

Robert E. Hampton,
Chairman, Civil Service Commission.

Arthur E. Flemming,
Chairman, Commission on Civil Rights.

Because of its equal employment opportunity responsibilities under the State and Local Government Fiscal Assistance Act of 1972 (the revenue sharing act), the Department of Treasury was invited to participate in the formulation of this policy statement; and it concurs and joins in the adoption of this policy statement.

Done this 26th day of August 1976.

Richard Albrecht,
General Counsel, Department of the Treasury.

Section 18. *Citations.* The official title of these guidelines is "Uniform Guidelines on Employee Selection Procedures (1978)". The Uniform Guidelines on Employee Selection Procedures (1978) are intended to establish a uniform Federal position in the area of prohibiting discrimination in employment practices on grounds of race, color, religion, sex, or national origin. These guidelines have been adopted by the Equal Employment Opportunity Commission, the Department of Labor, the Department of Justice, and the Civil Service Commission.

The official citation is:

"Section ——, Uniform Guidelines on Employee Selection Procedure (1978); 43 FR —— (August 25, 1978)."

The short form citation is:

"Section ——, U.G.E.S.P. (1978); 43 FR —— (August 25, 1978)."

When the guidelines are cited in connection with the activities of one of the issuing agencies, a specific citation to the regulations of that agency can be added at the end of the above citation. The specific additional citations are as follows:

Equal Employment Opportunity Commission
  29 CFR Part 1607
Department of Labor
Office of Federal Contract Compliance Programs
  41 CFR Part 60-3
Department of Justice
  28 CFR 50.14
Civil Service Commission
  5 CFR 300.103(c)

Normally when citing these guidelines, the section number immediately preceding the title of the guidelines will be from these guidelines series 1-18. If a section number from the codification for an individual agency is needed it can also be added at the end of the agency citation. For example, section 6A of these guidelines could be cited for EEOC as follows: "Section 6A, Uniform Guidelines on Employee Selection Procedures (1978); 43 FR ——, (August 25, 1978); 29 CFR Part 1607, section 6A."

Eleanor Holmes Norton,
Chair, Equal Employment Opportunity Commission.

Alan K. Campbell,
Chairman, Civil Service Commission.

Ray Marshall,
Secretary of Labor.

Griffin B. Bell,
Attorney General.

(28 U.S.C. 509; 5 U.S.C. 301)

[Order No. 668-76, 41 FR 51735, Nov. 23, 1976, as amended at 43 FR 38295, Aug. 25, 1978]

§ 50.15 Representation of Federal officials and employees by Department of Justice attorneys or by private counsel furnished by the Department in civil and Congressional proceedings, and in state criminal proceedings in which Federal employees are sued or subpoenaed in their individual capacities.

(a) Under the procedures set forth below, a federal employee (hereby defined to include present and former Federal officials and employees) may be provided representation in civil and Congressional proceedings and in state criminal proceedings in which he is sued, subpoenaed, or charged in his individual capacity, not covered by § 15.1 of this chapter, when the actions for which representation is requested reasonably appear to have been performed within the scope of the employee's employment and providing representation would otherwise be in the interest of the United States. No special form of request for representation is required when it is clear from the pleadings in a case that the employee is being sued solely in his official capacity and only equitable relief is sought. (See USAM 4-13.000)

(1) When an employee believes he is entitled to representation by the Department of Justice in a proceeding, he must submit forthwith a written request for that representation, together with all process and pleadings served upon him, to his immediate supervisor or whomever is designated by the head of his department or agency. Unless the employee's employing federal agency concludes that representation is clearly unwarranted, it shall submit, in a timely manner, to the Civil Division or other appropriate litigating division (Antitrust, Civil Rights, Criminal, Land and Natural Resources or the Tax Division), a statement containing its findings as to whether the employee was acting within the scope of his employment and its recommendation for or against providing representation. The statement should be accompanied by all available factual information. In emergency situations the litigating division may initiate conditional representation after a telephone request from the appropriate official of the employing agency. In

such cases, the written request and appropriate documentation must be subsequently provided.

(2) Upon receipt of the individual's request for counsel, the litigating division shall determine whether the employee's actions reasonably appear to have been performed within the scope of his employment and whether providing representation would be in the interest of the United States. In circumstances where considerations of professional ethics prohibit direct review of the facts by attorneys of the litigating division (e.g. because of the possible existence of inter-defendant conflicts) the litigating division may delegate the fact-finding aspects of this function to other components of the Department or to a private attorney at federal expenses.

(3) Attorneys employed by any component of the Department of Justice who participate in any process utilized for the purpose of determining whether the Department should provide representation to a federal employee, undertake a full and traditional attorney-client relationship with the employee with respect to application of the attorney-client privilege. If representation is authorized, Justice Department attorneys who represent an employee under this section also undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. Any adverse information communicated by the client-employee to an attorney during the course of such attorney-client relationship shall not be disclosed to anyone, either inside or outside the Department, other than attorneys responsible for representation of the employee, unless such disclosure is authorized by the employee. Such adverse information shall continue to be fully protected whether or not representation is provided, and even though representation may be denied or discontinued. The extent, if any, to which attorneys employed by an agency other than the Department of Justice undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege, either for purposes of determining whether representation should be provided or to assist Justice Department attorneys in representing the employee, shall be determined by the agency employing the attorneys.

(4) Representation is not available in federal criminal proceedings. In other proceedings for which representation is sought, where there appears to exist the possibility of a federal criminal investigation or indictment relating to the same subject matter, the litigating division shall contact a designated official in the Criminal, Civil Rights or Tax Division or other prosecutive authority within the Department (hereinafter "prosecuting division") to determine whether the employee is either a subject of a federal criminal investigation or a defendant in a federal criminal case. An employee is the subject of an investigation if, in addition to being circumstantially implicated by having the appropriate responsibilities at the appropriate time, there is some evidence of his specific participation in a crime.

(5) If a prosecuting division of the Department indicates that the employee is not the subject of a criminal investigation concerning the act or acts for which he seeks representation, then representation may be provided if otherwise permissible under the provisions of this section. Similarly, if the prosecuting division indicates that there is an ongoing investigation, but into a matter unrelated to that for which representation has been requested, then representation may be provided.

(6) If the prosecuting division indicates that the employee is the subject of a federal criminal investigation concerning the act or acts for which he seeks representation, the litigating division shall inform the employee that no representation by Justice Department attorneys will be provided in the related civil, congressional, or state criminal proceeding. In such a case, however, the litigating division, in its discretion, may provide a private attorney to the employee at federal expense under the procedures of § 50.16 provided no decision has been made to seek an indictment or file an information against the employee.

(7) In any case where it is determined that Department of Justice at-

torneys will represent a federal employee, the employee must be notified of his right to retain private counsel at his own expense. If he elects representation by Department of Justice attorneys, the employee and his agency shall be promptly informed.

(i) That in actions where the United States, any agency, or any officer thereof in his official capacity is also named as a defendant, the Department of Justice is required by law to represent the United States and/or such agency or officer and will assert all appropriate legal positions and defenses on behalf of such agency, officer and/or the United States;

(ii) That the Department of Justice will not assert any legal position or defense on behalf of any employee sued in his individual capacity which is deemed not to be in the interest of the United States;

(iii) Where appropriate, that neither the Department of Justice nor any agency of the United States Government is obligated to pay or to indemnify the defendant employee for any judgment for money damages which may be rendered against such employee;

(iv) That any appeal by Department of Justice attorneys from an adverse ruling or judgment against the employee may only be taken upon the discretionary approval of the Solicitor General, but the employee-defendant may pursue an appeal at his own expense whenever the Solicitor General declines to authorize an appeal and private counsel is not provided at federal expense under the procedures of § 50.16; and

(v) That while no conflict appears to exist at the time representation is tendered which would preclude making all arguments necessary to the adequate defense of the employee, if such conflict should arise in the future the employee will be promptly advised and steps will be taken to resolve the conflict as indicated by paragraphs (a)(6), (a)(9) and (a)(10) of this section, and by § 50.16.

(8) If a determination not to provide representation is made, the litigating division shall inform the agency and/or the employee of the determination.

(9) If conflicts exist between the legal and factual positions of various employees in the same case which make it inappropriate for a single attorney to represent them all, the employees may be separated into as many compatible groups as is necessary to resolve the conflict problem and each group may be provided with separate representation. Circumstances may make it advisable that private representation be provided to all conflicting groups and that direct Justice Department representation be withheld so as not to prejudice particular defendants. In such situations, the procedures of § 50.16 will apply.

(10) Whenever the Solicitor General declines to authorize further appellate review or the Department attorney assigned to represent an employee becomes aware that the representation of the employee could involve the assertion of a position that conflicts with the interests of the United States, the attorney shall fully advise the employee of the decision not to appeal or the nature, extent, and potential consequences of the conflict. The attorney shall also determine, after consultation with his supervisor (and, if appropriate, with the litigating division) whether the assertion of the position or appellate review is necessary to the adequate representation of the employee and

(i) If it is determined that the assertion of the position or appeal is not necessary to the adequate representation of the employee, and if the employee knowingly agrees to forego appeal or to waive the assertion of that position, governmental representation may be provided or continued; or

(ii) If the employee does not consent to forego appeal or waive the assertion of the position, or if it is determined that an appeal or assertion of the position is necessary to the adequate representation of the employee, a Justice Department lawyer may not provide or continue to provide the representation; and

(iii) In appropriate cases arising under paragraph (a)(10)(ii) of this section, a private attorney may be provided at federal expense under the procedures of § 50.16.

(11) Once undertaken, representation of a federal employee under this subsection will continue until either all appropriate proceedings, including applicable appellate procedures approved by the Solicitor General, have ended, or until any of the bases for declining or withdrawing from representation set forth in this section is found to exist, including without limitation the basis that representation is not in the interest of the United States. If representation is discontinued for any reason, the representing Department attorney on the case will seek to withdraw but will take all reasonable steps to avoid prejudice to the employee.

(b) Representation is not available to a federal employee whenever:

(1) The representation requested is in connection with a federal criminal proceeding;

(2) The conduct with regard to which the employee desires representation does not reasonably appear to have been performed within the scope of his employment with the federal government;

(3) It is otherwise determined by the Department that it is not in the interest of the United States to provide representation to the employee.

[Order No. 970-82, 47 FR 8172, Feb. 25, 1982]

§ 50.16 Representation of Federal employees by private counsel at Federal expense.

(a) Representation by private counsel at federal expense is subject to the availability of funds and may be provided to a federal employee only in the instances described in § 50.15(a)(6), (9) and (10), and in appropriate circumstances, for the purposes set forth in § 50.15(a)(2).

(b) To ensure uniformity in retention procedures among the litigating divisions, the Civil Division shall be responsible for establishing procedures for the retention of private counsel including the setting of fee schedules. In all instances where a litigating division decides to retain private counsel under § 50.16, the Civil Division shall be consulted before the retention is undertaken.

(c) Where private counsel is provided, the following procedures shall apply:

(1) While the Department of Justice will generally defer to the employee's choice of counsel, the Department must approve in advance any private counsel to be retained under this section. Where national security interests may be involved, the Department of Justice will consult with the agency employing the federal defendant seeking representation.

(2) Federal payments to private counsel for an employee will cease if the private counsel violates any of the terms of the retention agreement or the Department of Justice.

(i) Decides to seek an indictment of, or to file an information against, that employee on a federal criminal charge relating to the conduct concerning which representation was undertaken;

(ii) Determines that the employee's actions do not reasonably appear to have been performed within the scope of his employment;

(iii) Resolves any conflict described herein and tenders representation by Department of Justice attorneys;

(iv) Determines that continued representation is not in the interest of the United States;

(v) Terminates the retainer with the concurrence of the employee-client for any reason.

[Order No. 970-82, 47 FR 8174, Feb. 25, 1982]

§ 50.17 Ex parte communications in informal rulemaking proceedings.

In rulemaking proceedings subject only to the procedural requirements of 5 U.S.C. 553:

(a) A general prohibition applicable to all offices, boards, bureaus and divisions of the Department of Justice against the receipt of private, ex parte oral or written communications is undesirable, because it would deprive the Department of the flexibility needed to fashion rulemaking procedures appropriate to the issues involved, and would introduce a degree of formality that would, at least in most instances, result in procedures that are unduly complicated, slow, and expensive, and, at the same time, perhaps not conducive to developing all relevant information.

(b) All written communications from outside the Department addressed to the merits of a proposed rule, received after notice of proposed informal rulemaking and in its course by the Department, its offices, boards, and bureaus, and divisions or their personnel participating in the decision, should be placed promptly in a file available for public inspection.

(c) All oral communications from outside the Department of significant information or argument respecting the merits of a proposed rule, received after notice of proposed informal rulemaking and in its course by the Department, its offices, boards, bureaus, and divisions or their personnel participating in the decision, should be summarized in writing and placed promptly in a file available for public inspection.

(d) The Department may properly withhold from the public files information exempt from disclosure under 5 U.S.C. 552.

(e) The Department may conclude that restrictions on ex parte communications in particular rulemaking proceedings are necessitated by considerations of fairness or for other reasons.

(28 U.S.C. 509)

[Order No. 801-78, 43 FR 43297, Sept. 25, 1978]

§ 50.18 Criminal division review under the Foreign Corrupt Practices Act of 1977.

Although the Department of Justice is not authorized to give advisory opinions to private parties, the Criminal Division is willing, in certain circumstances, to review proposed conduct and state its present enforcement intention under sections 103 and 104 of the Foreign Corrupt Practices Act of 1977, 15 U.S.C. 78dd-1, 78dd-2, but not including section 102 of the Foreign Corrupt Practices Act, 15 U.S.C. 78m(b)(2), (3). The conditions for such review are set forth below:

(a) A request for a Foreign Corrupt Practices Act (FCPA) review letter must be submitted in writing in an original and five copies to the Assistant Attorney General in charge of the Criminal Division, Attention: FCPA Review Group. The mailing address is P.O. Box 7814, Benjamin Franklin Station, Washington, D.C. 20044. The address for hand-delivery is 8th floor, Federal Triangle Building, 315 9th Street, NW., Washington, D.C. 20530.

(b) The entire transaction which is the subject of the review request must be an actual transaction but need not involve only proposed conduct. The Criminal Division will not consider a request, however, unless that portion of the transaction for which clearance is sought involves only proposed conduct.

(c) The Criminal Division will consider a review request only when submitted by a party or parties to the transaction which is the subject of the review request.

(d) The Criminal Division may, in its discretion, refuse to consider a review request.

(e) An FCPA review letter shall have no application to any party which does not join in the request therefor.

(f) A review request shall be specific and contain in detail all relevant and material information bearing on the conduct for which review is requested and on the circumstances of the proposed conduct. A review request must be signed on behalf of each requesting party by an appropriate senior officer with operational responsibility for the conduct which is the subject of the review request and who has been designated by the chief executive officer to sign the review request. In appropriate cases, the chief executive officer of each requesting party may be required to sign the review request. The person signing the review request must certify that it contains a true, correct and complete disclosure with respect to the proposed conduct and the circumstances of the conduct.

(g) Each party shall provide the Criminal Division with any additional information or documents the Division may thereafter request in order to review a matter. Any information furnished orally shall be promptly confirmed in writing, signed by the same person who signed the initial review request and certified by him to be a true, correct and complete disclosure of the requested information. In connection with any request for review the Criminal Division will also conduct whatever independent investigation it believes is appropriate.

(h) After review of a request submitted hereunder, the Criminal Division may: State its present enforcement intention under sections 103 and 104 of the FCPA with respect to the proposed business conduct; decline to state its present enforcement intention; or take such other position or action as it considers appropriate.

(i) The Criminal Division will make every reasonable effort to respond to any review request within 30 days after receipt of the review request and of any requested additional information and documents.

(j) No oral clearance, release or other statement purporting to limit the enforcement discretion of the Department of Justice may be given. The requesting party or parties may rely only upon a written FCPA review letter signed by the Assistant Attorney General in charge of the Criminal Division or his delegate.

(k) Each FCPA review letter can be relied upon by the requesting party or parties to the extent the disclosure was accurate and complete and to the extent the disclosure continues accurately and completely to reflect circumstances after the date of issuance of the review letter.

(l) An FCPA review letter will not bind or obligate any other agency; nor will it affect the obligations of the requesting party or parties to any other agency, nor under any statutory or regulatory provision other than those specifically cited in the particular review letter.

(m) Neither the submission of a request for an FCPA review, its pendency, nor the issuance of an FCPA review letter, shall in any way alter the responsibility of the party or parties to comply with the accounting requirements of section 102 of the Foreign Corrupt Practices Act, 15 U.S.C. 78m(b)(2), (3).

(n) If the business conduct for which review is requested is subject to approval by a regulatory agency, a review request shall be considered before agency approval has been obtained only where it appears that exceptional and unnecessary burdens might otherwise be imposed on the requesting party or parties, or where the agency specifically requests that the party or parties first seek review from the Criminal Division. However, any FCPA review letter issued in these as in any other circumstances, will state only the Department's present enforcement intention under sections 103 and 104 of the Foreign Corrupt Practices Act. Such FCPA review letter shall in no way be taken to indicate the Department's views on the legal or factual issues that may be raised before the regulatory agency, or in an appeal from the regulatory agency's decision.

(o)(1) The requesting party or parties may ask the Division to delay or to refrain from ever making publicly available parts of a review request, and part or all of any information or documents submitted in support of the review request. Any request for nondisclosure must be made at the time of submitting the review request or the information or documents to the division. The requesting party or parties must: (i) Specify precisely those parts of the request, information or documents that it asks not be made publicly available; (ii) state the minimum period of time during which nondisclosure is considered necessary; and (iii) justify the request for nondisclosure, both as to content and time, by showing that the material is exempt from mandatory public disclosure because it consists of trade secrets or commercial and financial information that is privileged and confidential and is received from a person, 5 U.S.C. 552(b)(4), or because it is otherwise exempt pursuant to any other provision of 5 U.S.C. 552(b). If the Department determines that such grounds for nondisclosure exist, then except as provided by paragraph (o)(2) of this section, the material shall not be made publicly available unless release is ordered by a court of competent jurisdiction. If the Department determines that such grounds for nondisclosure do not exist, and the Department receives a request for disclosure of the material pursuant to the Freedom of Information Act, notice of the Department's determination that there are no grounds for nondisclosure will be given to the party or parties submitting the FCPA review request at least 7 days before any release to the Freedom of Information Act requester.

(2) Nothing contained in paragraph (o)(1) of this section shall limit the Division's right to issue, at its discretion, a release describing the identity of the party or parties submitting an FCPA review request, the general nature and circumstances of the proposed conduct, and the action taken by the Department in response to the FCPA review request. Where the Department determines such information to be exempt from mandatory disclosure, such a release shall not disclose: (i) the identity of the foreign country in which the proposed conduct is to take place; (ii) the identity of any foreign sales agents; or (iii) other types of identifying information. The Division shall index such release and place it in a file available to the public upon request.

(3) This paragraph reflects a policy determination by the Department of Justice and is subject to any limitations on public disclosure and any required public disclosure arising from statutory restrictions, Executive Order, or the national interest.

(p) Any requesting party or parties may withdraw a review request at any time. The Division remains free, however, to submit such comments to the requesting party or parties as it deems appropriate. Failure to take action after receipt of a review request, documents or information, whether submitted pursuant to this procedure or otherwise, shall not in any way limit or stop the Division from taking any action at such time thereafter as it deems appropriate. The Division reserves the right to retain any review request, documents and information submitted to it under this procedure or otherwise and to use them for all governmental purposes.

[Order No. 878-80, 45 FR 20800, Mar. 31, 1980]

§ 50.19 Procedures to be followed by government attorneys prior to filing recusal or disqualification motions.

The determination to seek for any reason the disqualification or recusal of a justice, judge, or magistrate is a most significant and sensitive decision. This is particularly true for government attorneys, who should be guided by uniform procedures in obtaining the requisite authorization for such a motion. This statement is designed to establish a uniform procedure.

(a) No motion to recuse or disqualify a justice, judge, or magistrate (*see, e.g.,* 28 U.S.C. 144, 455) shall be made or supported by any Department of Justice attorney, United States Attorney (including Assistant United States Attorneys) or agency counsel conducting litigation pursuant to agreement with or authority delegated by the Attorney General, without the prior written approval of the Assistant Attorney General having ultimate supervisory power over the action in which recusal or disqualification is being considered.

(b) Prior to seeking such approval, Justice Department lawyer(s) handling the litigation shall timely seek the recommendations of the United States Attorney for the district in which the matter is pending, and the views of the client agencies, if any. Similarly, if agency attorneys are primarily handling any such suit, they shall seek the recommendations of the United States Attorney and provide them to the Department of Justice with the request for approval. In actions where the United States Attorneys are primarily handling the litigation in question, they shall seek the recommendation of the client agencies, if any, for submission to the Assistant Attorney General.

(c) In the event that the conduct and pace of the litigation does not allow sufficient time to seek the prior written approval by the Assistant Attorney General, prior oral authorization shall be sought and a written record fully reflecting that authorization shall be subsequently prepared and submitted to the Assistant Attorney General.

(d) Assistant Attorneys General may delegate the authority to approve or deny requests made pursuant to this section, but only to Deputy Assistant Attorneys General or an equivalent position.

(e) This policy statement does not create or enlarge any legal obligations upon the Department of Justice in civil or criminal litigation, and it is not intended to create any private rights enforceable by private parties in litigation with the United States.

[Order No. 977-82, 47 FR 22094, May 21, 1982]

PART 51—PROCEDURES FOR THE ADMINISTRATION OF SECTION 5 OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED

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AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1973c.

SOURCE: 46 FR 872, Jan. 5, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 51.1 Purpose.

Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, prohibits the enforcement in any jurisdiction covered by Section 4(b) of the Act, 42 U.S.C. 1973(b), of any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage, until either: (1) A declaratory judgment is obtained from the U.S. District Court for the District of Columbia that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, or (2) it has been submitted to the Attorney General and the Attorney General has interposed no objection within a 60-day period following submission. In order to make clear the responsibilities of the Attorney General under Section 5 and the interpretation of the Attorney General of the responsibility imposed on others under this section, the procedures in this part have been established to govern the administration of Section 5.

§ 51.2 Definitions.

As used in this part—

(a) "Act" means the Voting Rights Act of 1965, 79 Stat. 437, as amended by the Civil Rights Act of 1968, 82 Stat. 73, the Voting Rights Act Amendments of 1970, 84 Stat. 314, and the Voting Rights Act Amendments of 1975, 89 Stat. 400, 42 U.S.C. 1973 *et seq.* Section numbers, such as "Section 14(c)(3)," refer to sections of the Act.

(b) "Attorney General" means the Attorney General of the United States or the delegate of the Attorney General.

(c) "Vote" and "voting" are used, as defined in the Act, to include "all action necessary to make a vote effective in any primary, special, or general election, including but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election." Section 14(c)(1).

(d) "Change affecting voting" means any voting qualification, prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage under Section 4(b) and includes, *inter alia*, the examples given in § 51.12.

(e) "Political subdivision" is used, as defined in the Act, to refer to "* * * any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting." Section 14(c)(2).

(f) "Covered jurisdiction" is used to refer to a State, where the determination referred to in § 51.4 has been made on a statewide basis, and to a political subdivision, where the determination has not been made on a statewide basis.

(g) "Preclearance" is used to refer to the obtaining of the declaratory judgment described in Section 5 or to the failure of the Attorney General to interpose an objection pursuant to Section 5.

(h) "Submission" is used to refer to the written presentation to the Attorney General by an appropriate official of any change affecting voting.

(i) "Submitting authority" means the jurisdiction on whose behalf a submission is made.

(j) "Language minority" or "language minority group" is used, as defined in the Act, to refer to persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage. Section 14(c)(3). See 28 CFR Part 55, Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups.

§ 51.3 Delegation of authority.

The responsibility and authority for determinations under Section 5 have been delegated by the Attorney General to the Assistant Attorney General, Civil Rights Division. With the exception of objections and decisions following the reconsideration of objections, the Chief of the Voting Section is authorized to act on behalf of the Assistant Attorney General.

§ 51.4 Date used to determine coverage; list of covered jurisdictions.

(a) The requirement of Section 5 takes effect upon publication in the Federal Register of the requisite determinations of the Director of the Census and the Attorney General under Section 4(b). These determinations are not reviewable in any court. Section 4(b).

(b) Section 5 requires the preclearance of changes affecting voting made since the date used for the determination of coverage. For each covered jurisdiction that date is one of the following: November 1, 1964; November 1, 1968; or November 1, 1972. A list of covered jurisdictions, together with the applicable date used to determine coverage, is contained in the appendix to this part. Any additional determinations of coverage will be published in the Federal Register.

§ 51.5 Termination of coverage.

A covered jurisdiction may terminate the application of Section 5 by obtaining the declaratory judgment described in Section 4(a) of the Act.

§ 51.6 Political subunits.

All political subunits within a covered jurisdiction (e.g., counties, cities, school districts) are subject to the requirement of Section 5.

§ 51.7 Political parties.

Certain activities of political parties are subject to the preclearance requirement of Section 5. A change affecting voting effected by a political party is subject to the preclearance requirement: (1) If the change relates to a public electoral function of the party and (2) if the party is acting under authority explicitly or implicitly granted by a covered jurisdiction or political subunit subject to the preclearance requirement of Section 5. For example, changes with respect to the recruitment of party members, the conduct of political campaigns, and the drafting of party platforms are not subject to the preclearance requirement. Changes with respect to the conduct of primary elections at which party nominees, delegates to party conventions, or party officials are chosen are subject to the preclearance requirement of Section 5. Where appropriate the term "jurisdiction" (but not "covered jurisdiction") includes political parties.

§ 51.8 Computation of time.

(a) The Attorney General shall have 60 days in which to interpose an objection to a submitted change affecting voting.

(b) Except as specified in §§ 51.35, 51.37, and 51.41 the 60-day period shall commence upon receipt by the Department of Justice of a submission.

(c) The 60-day period shall mean 60 calendar days, with the day of receipt of the submission not counted. If the final day of the period should fall on a Saturday, Sunday, any day designated as a holiday by the President or Congress of the United States, or any other day that is not a day of regular business for the Department of Justice, the Attorney General shall have until the close of the next full business day in which to interpose an objection. The date of the Attorney General's response shall be the date on which it is mailed to the submitting authority.

§ 51.9 Requirement of action for declaratory judgment or submission to the Attorney General.

Section 5 requires that, prior to enforcement of any change affecting voting, the jurisdiction that has enacted or seeks to administer the change must either: (1) Obtain a judicial determination from the U.S. District Court for the District of Columbia that denial or abridgment of the right to vote on account of race, color, or membership in a language minority group is not the purpose and will not be the effect of the change or (2) make to the Attorney General a proper submission of the change to which no objection is interposed. It is unlawful to enforce a change affecting voting without obtaining preclearance under Section 5. The obligation to obtain such preclearance is not relieved by unlawful enforcement.

§ 51.10 Right to bring suit.

Submission to the Attorney General does not affect the right of the submitting authority to bring an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change affecting voting does not have the prohibited discriminatory purpose or effect

§ 51.11 Scope of requirement.

Any change affecting voting, even though it appears to be minor or indirect, even though it ostensibly expands voting rights, or even though it is designed to remove the elements that caused objection by the Attorney General to a prior submitted change, must meet the Section 5 preclearance requirement.

§ 51.12 Examples of changes.

Changes affecting voting include, but are not limited to, the following examples:

(a) Any change in qualifications or eligibility for voting.

(b) Any change concerning registration, balloting, and the counting of votes and any change concerning publicity for or assistance in registration or voting.

(c) Any change with respect to the use of a language other than English in any aspect of the electoral process.

(d) Any change in the boundaries of voting precincts or in the location of polling places.

(e) Any change in the constituency of an official or the boundaries of a voting unit (e.g., through redistricting, annexation, deannexation, incorporation, reapportionment, changing to at-large elections from district elections, or changing to district elections from at-large elections).

(f) Any change in the method of determining the outcome of an election (e.g., by requiring a majority vote for election or the use of a designated post or place system).

(g) Any change affecting the eligibility of persons to become or remain candidates, to obtain a position on the ballot in primary or general elections, or to become or remain holders of elective offices.

(h) Any change in the eligibility and qualification procedures for independent candidates.

(i) Any change in the term of an elective office or an elected official or in the offices that are elective (e.g., by shortening the term of an office, changing from election to appointment or staggering the terms of offices).

(j) Any change affecting the necessity of or methods for offering issues and propositions for approval by referendum.

(k) Any change affecting the right or ability of persons to participate in political campaigns which is effected by a jurisdiction subject to the requirement of Section 5.

§ 51.13 Recurrent practices.

Where a jurisdiction implements a practice or procedure periodically or upon certain established contingencies, a change occurs: (1) The first time such a practice or procedure is implemented by the jurisdiction, (2) when the manner in which such a practice or procedure is implemented by the jurisdiction is changed, or (3) when the rules for determining when such a practice or procedure will be implemented are changed. The failure of the Attorney General to object to a recurrent practice or procedure constitutes preclearance of the future use of the practice or procedure if its recurrent nature is clearly stated or described in the submission or is expressly recognized in the final response of the Attorney General on the merits of the submission.

§ 51.14 Enabling legislation and contingent or nonuniform requirements.

(a) The failure of the Attorney General to interpose an objection to legislation: (1) That enables or permits political subunits to institute a voting change or (2) that requires or enables political subunits to institute a voting change upon some future event or if they satisfy certain criteria does not exempt the political subunit itself from the requirement to obtain preclearance when it seeks or is required to institute the change in question, unless implementation by the subunit is explicitly included and described in the submission of such parent legislation.

(b) Such legislation includes for example: (1) Legislation authorizing counties, cities, or school districts to institute any of the changes described in § 51.12, (2) legislation requiring a political subunit that chooses a certain form of government to follow specified election procedures, (3) legislation requiring or authorizing political subunits of a certain size or a certain location to institute specified changes, (4) legislation requiring a political subunit to follow certain practices or procedures unless the subunit's charter or ordinances specify to the contrary.

[46 FR 872, Jan. 5, 1981; Order No. 921a-80, 46 FR 9571, Jan. 29, 1981]

§ 51.15 Distinction between changes in procedure and changes in substance.

The failure of the Attorney General to interpose an objection to a procedure for instituting a change affecting voting does not exempt the substantive change from the preclearance requirement. For example, if the procedure for the approval of an annexation is changed from city council approval to approval in a referendum, the preclearance of the new procedure does not exempt an annexation accomplished under the new procedure from the preclearance requirement.

§ 51.16 Court-ordered changes.

Changes affecting voting that are specifically ordered by a Federal court as a result of the court's equitable jurisdiction over an adversary proceeding are not subject to the preclearance requirement of Section 5. However, subsequent changes necessitated by the court order but decided upon by the jurisdiction are subject to the preclearance requirement. For example, although a court-ordered districting plan may not be subject to the preclearance requirement, changes in voting precincts and polling places made necessary by the new plan remain subject to Section 5.

§ 51.17 Request for notification concerning voting litigation.

A jurisdiction subject to the preclearance requirement of Section 5 that becomes involved in any litigation concerning voting is requested promptly to notify the Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530. Such notification will not be considered a submission under Section 5.

Subpart B—Procedures for Submission to the Attorney General

§ 51.18 Form of submissions.

Submissions may be made in letter or any other written form.

§ 51.19 Time of submissions.

Changes affecting voting should be submitted as soon as possible after they become final.

§ 51.20 Premature submissions.

The Attorney General will not consider on the merits: (a) Any proposal for a change affecting voting submitted prior to final enactment or administrative decision or (b) any proposed change which has a direct bearing on another change affecting voting which has not received Section 5 preclearance. However, with respect to a change for which approval by referendum, a State court or a Federal agency is required, the Attorney General may make a determination concerning the change prior to such approval if the change is not subject to alteration in the final approving action and if all other action necessary for approval has been taken.

§ 51.21 Party and jurisdiction responsible for making submissions.

(a) Changes affecting voting shall be submitted by the chief legal officer or other appropriate official of the submitting authority or by any other authorized person on behalf of the submitting authority. When one or more counties or other political subunits within a State will be affected, the State may make a submission on their behalf. Where a State is covered as a whole, State legislation (except legislation of local applicability) or other changes undertaken or required by the State shall be submitted by the State.

(b) A change effected by a political party (see § 51.7) may be submitted by an appropriate official of the political party.

§ 51.22 Address for submissions.

Changes affecting voting shall be mailed or delivered to the Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530. The envelope and first page of the submission shall be clearly marked: Submission under Section 5 of the Voting Rights Act.

§ 51.23 Withdrawal of submissions.

If while a submission is pending the submitted change is repealed, altered, or declared invalid or otherwise becomes unenforceable, the jurisdiction may withdraw the submission. In other circumstances, a jurisdiction may withdraw a submission only if it shows good cause for such withdrawal.

Subpart C—Contents of Submissions

§ 51.24 General.

(a) The source of any information contained in a submission should be identified.

(b) Where an estimate is provided in lieu of more reliable statistics, the submission should identify the name, position, and qualifications of the person responsible for the estimate and should briefly describe the basis for the estimate.

(c) Submissions should be no longer than is necessary for the presentation of the appropriate information and materials.

(d) A submitting authority that desires the Attorney General to consider any information supplied as part of an earlier submission may incorporate such information by reference by stating the date and subject matter of the earlier submission and identifying the relevant information.

(e) Where information requested by this subpart is relevant but not known or available, or is not applicable, the submission should so state.

§ 51.25 Required contents.

Each submission should contain the following information or documents to enable the Attorney General to make the required determination pursuant to Section 5 with respect to the submitted change affecting voting:

(a) A copy of any ordinance, enactment, order or regulation embodying a change affecting voting.

(b) If the change affecting voting is not readily apparent on the face of the document provided under paragraph (a) or is not embodied in a document, a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.

(c) The name, title, address, and telephone number of the person making the submission.

(d) The name of the submitting authority and the name of the jurisdiction responsible for the change, if different.

(e) If the submission is not from a State or county, the name of the county and State in which the submitting authority is located.

(f) Identification of the person or body responsible for making the change and the mode of decision (e.g., act of State legislature, ordinance of city council, administrative decision by registrar).

(g) A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.

(h) The date of adoption of the change affecting voting.

(i) The date on which the change is to take effect.

(j) A statement that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

(k) Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.

(l) A statement of the reasons for the change.

(m) A statement of the anticipated effect of the change on members of racial or language minority groups.

(n) A statement identifying any past or pending litigation concerning the change or related voting practices.

(o) A statement that the prior practice has been precleared (with the date) or is not subject to the preclearance requirement and a statement that the procedure for the adoption of the change has been precleared (with the date) or is not subject to the preclearance requirement, or an explanation of why such statements cannot be made.

(p) Other information that the Attorney General determines is required for an evaluation of the purpose or effect of the change. Such information may include items listed in § 51.26 and is most likely to be needed with respect to redistricting, annexations, and other complex changes. In the interest of time such information should be furnished with the initial submission relating to voting changes of this type. When such information is required, but not provided, the Attorney General shall notify the submitting authority in the manner provided in § 51.35.

§ 51.26 Supplemental contents.

Review by the Attorney General will be facilitated if the following information, where pertinent, is provided in addition to that required by § 51.25.

(a) *Demographic information.* (1) Total and voting age population of the affected area before and after the change by race and language group. If such information is contained in publications of the U.S. Bureau of the Census, reference to the appropriate volume and table is sufficient.

(2) The number of registered voters for the affected area by voting precinct before and after the change, by race and language group.

(3) Any estimates of population, by race and language group, made in connection with the adoption of the change.

(b) *Maps.* Where any change is made that revises the constitutency that elects any office or affects the boundaries of any geographic unit or units defined or employed for voting purposes (e.g., redistricting, annexation, change from district to at-large elections) or that changes voting precinct boundaries, polling place locations, or voter registration sites, maps in duplicate of the area to be affected, containing the following information:

(1) The prior and new boundaries of the voting unit or units.

(2) The prior and new boundaries of voting precincts.

(3) The location of racial and language minority groups.

(4) Any natural boundaries or geographical features that influenced the selection of boundaries of the prior or new units.

(5) The location of prior and new polling places.

(6) The location of prior and new voter registration sites.

(c) *Election returns.* Where a change may affect the electoral influence of a racial or language minority group, returns of primary and general elections conducted by or in the jurisdiction, containing the following information:

(1) The name of each candidate.

(2) The race or language group of each candidate, if known.

(3) The position sought by each candidate.

(4) The number of votes received by each candidate, by voting precinct.

(5) The outcome of each contest.

(6) The number of registered voters, by race and language group, for each voting precinct for which election returns are furnished. Information with respect to elections held during the last ten years will normally be sufficient.

(d) *Language usage.* Where a change is made affecting the use of the language of a language minority group in the electoral process, information that will enable the Attorney General to determine whether the change is consistent with the minority language requirements of the Act. The Attorney General's interpretation of the minority language requirements of the Act is contained in Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 CFR Part 55.

(e) *Publicity and participation.* For submissions involving controversial or potentially controversial changes, evidence of public notice, of the opportunity for the public to be heard, and of the opportunity for interested parties to participate in the decision to adopt the proposed change and an account of the extent to which such participation, especially by minority group members, in fact took place. Examples of materials demonstrating public notice or participation include:

(1) Copies of newspaper articles discussing the proposed change.

(2) Copies of public notices that describe the proposed change and invite public comment or participation in hearings or that announce submission to and invite comments for the consideration of the Attorney General and statements regarding where such public notices appeared (e.g., newspaper, radio, or television, posted in public buildings, sent to identified individuals or groups).

(3) Minutes or accounts of public hearings concerning the proposed change.

(4) Statements, speeches, and other public communications concerning the proposed change.

(5) Copies of comments from the general public.

(6) Excerpts from legislative journals containing discussion of a submitted enactment, or other materials revealing its legislative purpose.

(f) *Minority group contacts.* For submissions from jurisdictions having a significant minority population, the names, addresses, telephone numbers, and organizational affiliation (if any) of racial or language minority group members who can be expected to be familiar with the proposed change or who have been active in the political process.

[46 FR 872, Jan. 5, 1981; Order No. 921a-80, 46 FR 9571, Jan. 29, 1981]

Subpart D—Communications From Individuals and Groups

§ 51.27 Communications concerning voting changes.

Any individual or group may send to the Attorney General information concerning a change affecting voting in a jurisdiction to which Section 5 applies.

(a) Communications may be in the form of a letter stating the name, address, and telephone number of the individual or group, describing the alleged change affecting voting and setting forth evidence regarding whether the change has or does not have a discriminatory purpose or effect, or simply bringing to the attention of the Attorney General the fact that a voting change has occurred.

(b) The communications should be mailed to the Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530. The envelope and first page should be marked: Comment under Section 5 of the Voting Rights Act.

(c) Comments by individuals or groups concerning any change affecting voting may be sent at any time; however, individuals and groups are encouraged to comment as soon as they learn of the change.

(d) Department of Justice officials and employees shall comply with the request of any individual that his or her identity not be disclosed to any person outside the Department, to the extent permitted by the Freedom of Information Act, 5 U.S.C. 552. In addition, whenever it appears to the Attorney General that disclosure of the identity of an individual who provided information regarding a change affecting voting "would constitute a clearly unwarranted invasion of personal privacy" under 5 U.S.C. 552(b)(6), the identity of the individual shall not be disclosed to any person outside the Department.

(e) When an individual or group desires the Attorney General to consider information that was supplied in connection with an earlier submission, it is not necessary to resubmit the information but merely to identify the earlier submission and the relevant information.

§ 51.28 Action on communications from individuals or groups.

(a) If there has already been a submission received of the change affecting voting brought to the attention of the Attorney General by an individual or group, any evidence from the individual or group shall be considered along with the materials submitted and materials resulting from any investigation.

(b) If such a submission has not been received, the Attorney General shall advise the appropriate jurisdiction of the requirement of Section 5 with respect to the change in question.

§ 51.29 Communications concerning voting suits.

Individuals and groups are urged to notify the Assistant Attorney General Civil Rights Division, of litigation concerning voting in jurisdictions subject to the requirement of Section 5.

§ 51.30 Establishment and maintenance of registry of interested individuals and groups.

The Attorney General shall establish and maintain a Registry of Interested Individuals and Groups, which shall contain the name and address of any individual or group that wishes to receive notice of Section 5 submissions. Information relating to this registry and to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a *et seq.*, is contained in Justice/CRT-004, 43 FR 44676 (Sept. 28, 1978).

Subpart E—Processing of Submissions

§ 51.31 Notice to registrants concerning submissions.

Weekly notice of submissions that have been received will be given to the individuals and groups who have registered for this purpose under § 51.30.

§ 51.32 Expedited consideration.

(a) When a submitting authority is required under State law or local ordinance or otherwise finds it necessary to implement a change within the 60-day period following submission, it may request that the submission be given expedited consideration. The submission should explain why such consideration is needed and provide the date by which a determination is required.

(b) Jurisdictions should endeavor to plan for changes in advance so that expedited consideration will not be required and should not routinely request such consideration. When a submitting authority demonstrates good cause for expedited consideration the Attorney General will attempt to make a decision by the date requested. However, the Attorney General cannot guarantee that such consideration can be given.

(c) Notice of the request for expedited consideration will be given to interested parties registered under § 51.30.

§ 51.33 Disposition of inappropriate submissions.

The Attorney General will make no response on the merits with respect to an inappropriate submission but will notify the submitting authority of the inappropriateness of the submission. Such notification will be made as promptly as possible and no later than the 60th day following receipt and will include an explanation of the inappropriateness of the submission. Inappropriate submissions include the submission of changes that do not affect voting (see, e.g., § 51.12), the submission of standards, practices, or procedures that have not been changed (see, e.g., §§ 51.4, 51.13), the submission of changes that affect voting but are not subject to the requirement of Section 5 (see, e.g., § 51.16), premature submissions (see § 51.20), and submissions by jurisdictions not subject to the requirement of Section 5 (see §§ 51.4, 51.5).

§ 51.34 Release of information concerning submissions.

The Attorney General shall have the discretion to call to the attention of the submitting authority or any interested individual or group information or comments related to a submission.

§ 51.35 Obtaining information from the submitting authority.

(a) If a submission does not satisfy the requirements of § 51.25, the Attorney General shall request such further information as is necessary from the submitting authority and advise the submitting authority that the 60-day period will not commence until such information is received by the Department of Justice. The request shall be made as promptly as possible after receipt of the original inadequate submission and no later than the 60th day following its receipt.

(b) A copy of the request shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

(c) If, after a request for further information is made pursuant to this section, the information requested becomes available to the Attorney General from a source other than the submitting authority, the Attorney General shall promptly notify the submitting authority, and the 60-day period will commence upon the date of such notification.

(d) Notice of the request for and receipt of further information will be given to interested parties registered under § 51.30.

§ 51.36 Obtaining information from others.

(a) The Attorney General may at any time request relevant information from governmental jurisdictions and from interested groups and individuals and may conduct any investigation or other inquiry that is deemed appropriate in making a determination.

(b) If a submission does not contain evidence of adequate notice to the public, and the Attorney General believes that such notice is essential to a determination, steps will be taken by the Attorney General to provide public notice sufficient to invite interested or affected persons to provide evidence as to the presence or absence of a discriminatory purpose or effect. The submitting authority shall be advised when any such steps are taken.

§ 51.37 Supplementary submissions.

When a submitting authority provides documents and information materially supplementing a submission (or a request for reconsideration of an objection) or, before the expiration of the 60-day period, makes a second submission such that the two submissions cannot be independently considered, the 60-day period for the original submission will be calculated from the receipt of the supplementary information or the second submission.

§ 51.38 Failure to complete submissions.

If after 60 days the submitting authority has not provided further information in response to a request made pursuant to § 51.35(a), the Attorney General, absent extenuating circumstances and consistent with the burden of proof under Section 5 described in § 51.39(e), may object to the change, giving notice as specified in § 51.43.

§ 51.39 Standards for determination by the Attorney General.

(a) Section 5 provides for submission to the Attorney General as an alternative to the seeking of a declaratory judgment from the U.S. District Court for the District of Columbia. Therefore, the Attorney General shall make the same determination that would be made by the court in an action for a declaratory judgment under Section 5: whether the submitted change has the purpose or will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

(b) Guided by the relevant judicial decisions, the Attorney General shall base a determination on a review of material presented by the submitting authority, relevant information provided by individuals or groups, and the results of any investigation conducted by the Department of Justice.

(c) If the Attorney General determines that a submitted change does not have the prohibited purpose or effect, no objection shall be interposed to the change.

(d) If the Attorney General determines that a submitted change has the prohibited purpose or effect, an objection shall be interposed to the change.

(e) The burden of proof on a submitting authority when it submits a change to the Attorney General is the same as it would be if the change was the subject of a declaratory judgment action in the U.S. District Court for the District of Columbia. Therefore, if the evidence as to the purpose or effect of a change is conflicting and the Attorney General is unable to determine that the submitted change does not have the prohibited purpose or effect, an objection shall be interposed to the change.

[46 FR 872, Jan. 5, 1981; Order No. 921a-80, 46 FR 9571, Jan. 29, 1981]

§ 51.40 Notification of decision not to object.

(a) The Attorney General shall within the 60-day period allowed notify the submitting authority of a decision to interpose no objection to a submitted change affecting voting.

(b) The notification shall state that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change.

(c) A copy of the notification shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

§ 51.41 Failure of the Attorney General to respond.

It is the practice and intention of the Attorney General to respond to each submission within the 60-day period. However, the failure of the Attorney General to make a written response within the 60-day period constitutes preclearance of the submitted change, provided the submission is addressed as specified in § 51.22 and is appropriate for a response on the merits as described in § 51.33.

§ 51.42 Reexamination of decision not to object.

After notification to the submitting authority of a decision to interpose no objection to a submitted change affecting voting has been given, the Attorney General may reexamine the submission if, prior to the expiration of the 60-day period, information indicating the possibility of the prohibited discriminatory purpose or effect is received. In this event, the Attorney General may interpose an objection provisionally and advise the submitting authority that examination of the change in light of the newly raised issues will continue and that a final decision will be rendered as soon as possible.

§ 51.43 Notification of decision to object.

(a) The Attorney General shall within the 60-day period allowed notify the submitting authority of a decision to interpose an objection. The reasons for the decision shall be stated.

(b) The submitting authority shall be advised that the Attorney General will reconsider an objection upon a request by the submitting authority.

(c) The submitting authority shall be advised further that notwithstanding the objection it may institute an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change objected to by the Attorney General does not have the prohibited discriminatory purpose or effect.

(d) A copy of the notification shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

(e) Notice of the decision to interpose an objection will be given to interested parties registered under § 51.30.

§ 51.44 Request for reconsideration.

(a) The submitting authority may at any time request the Attorney General to reconsider an objection.

(b) Requests may be in letter or any other written form and should contain relevant information or legal argument.

(c) Notice of the request will be given to any party who commented on the submission or requested notice of the Attorney General's action thereon and to interested parties registered under § 51.30. In appropriate cases the Attorney General may request the submitting authority to give local public notice of the request.

§ 51.45 Reconsideration of objection at the instance of the Attorney General.

(a) Where there appears to have been a substantial change in operative fact or relevant law, an objection may be reconsidered, if it is deemed appropriate, at the instance of the Attorney General.

(b) Notice of such a decision to reconsider shall be given to the submitting authority, to any party who commented on the submission or requested notice of the Attorney General's action thereon, and to interested parties registered under § 51.30, and the Attorney General shall decide whether to withdraw or to continue the objection only after such persons have had a reasonable opportunity to comment.

[46 FR 872, Jan. 5, 1981; Order No. 921a-80, 46 FR 9571, Jan. 29, 1981]

§ 51.46 Conference.

(a) A submitting authority that has requested reconsideration of an objection pursuant to § 51.44 may request a conference to produce information or legal argument in support of reconsideration.

(b) Such a conference shall be held at a location determined by the Attorney General and shall be conducted in an informal manner.

(c) When a submitting authority requests such a conference, individuals or groups that commented on the change prior to the Attorney General's objection or that seek to participate in response to any notice of a request for reconsideration shall be notified and given the opportunity to confer.

(d) The Attorney General shall have the discretion to hold separate meetings to confer with the submitting authority and other interested groups or individuals.

(e) Such conferences will be open to the public or to the press only at the discretion of the Attorney General and with the agreement of the participating parties.

§ 51.47 Decision after reconsideration.

(a) The Attorney General shall within the 60-day period following the receipt of a reconsideration request or following notice given under § 51.45(b) notify the submitting authority of the decision to continue or withdraw the objection, provided that the Attorney General shall have at least 15 days following any conference that is held in which to decide. The reasons for the decision shall be stated.

(b) The objection shall be withdrawn if the Attorney General is satisfied that the change does not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group.

(c) If the objection is not withdrawn, the submitting authority shall be advised that notwithstanding the objection it may institute an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change objected to by the Attorney General does not have the prohibited purpose or effect.

(d) A copy of the notification shall be sent to any party who has commented on the submission or reconsideration or has requested notice of the Attorney General's action thereon.

(e) Notice of the decision after reconsideration will be given to interested parties registered under § 51.30.

§ 51.48 Absence of judicial review.

The decision of the Attorney General not to object to a submitted change or to withdraw an objection is not reviewable. However, Section 5 states: "Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure."

§ 51.49 Records concerning submissions.

(a) Section 5 files: The Attorney General shall maintain a Section 5 file for each submission, containing the submission, related written materials, correspondence, memoranda, investigative reports, notations concerning conferences with the submitting authority or any interested individual or group, and copies of any letters from the Attorney General concerning the submission.

(b) Objection files: Brief summaries regarding each submission and the general findings of the Department of Justice investigation and decision concerning it will be prepared when a decision to interpose, continue, or withdraw an objection is made. Files of these summaries, arranged by jurisdiction and by the date upon which such decision is made, will be maintained.

(c) Computer file: Records of all submissions and of their dispositions by the Attorney General shall be electronically stored and periodically retrieved in the form of computer printouts.

(d) The contents of the above-described files shall be available for inspection and copying by the public during normal business hours at the Civil Rights Division, Department of Justice, Washington, D.C. Materials that are exempt from inspection under the Freedom of Information Act, 5 U.S.C. 552(b), may be withheld at the discretion of the Attorney General. Communications from individuals who have requested confidentiality or with respect to whom the Attorney General has determined that confidentiality is appropriate under § 51.27(d) shall be available only as provided by § 51.27(d). Applicable fees, if any, for the copying of the contents of these files are contained in the Department of Justice regulations implementing the Freedom of Information Act, 28 CFR 16.9.

Subpart F—Sanctions

§ 51.50 Enforcement by the Attorney General.

(a) The Attorney General is authorized to bring civil actions for appropriate relief against violations of the Act's provisions, including Section 5. See Section 12(d).

(b) Certain violations may be subject to criminal sanctions. See Sections 12 (a) and (c).

§ 51.51 Enforcement by private parties.

Private parties have standing to enforce Section 5.

Subpart G—Petition To Change Procedures

§ 51.52 Who may petition.

Any jurisdiction or interested individual or group may petition to have these procedural guidelines amended.

§ 51.53 Form of petition.

A petition under this subpart may be made by informal letter and shall state the name, address, and telephone number of the petitioner, the change requested, and the reasons for the change.

§ 51.54 Disposition of petition.

The Attorney General shall promptly consider and dispose of a petition under this subpart and give notice of the disposition, accompanied by a simple statement of the reasons, to the petitioner.

APPENDIX—JURISDICTIONS COVERED UNDER SECTION 4(b) OF THE VOTING RIGHTS ACT, AS AMENDED

The preclearance requirement of Section 5 of the Voting Rights Act, as amended, applies in the following jurisdictions. The date in parentheses is the date that was used to determine coverage for the jurisdiction it follows.

- Alabama (statewide) (Nov. 1, 1964)
- Alaska (statewide) (Nov. 1, 1972)
- Arizona (statewide) (Nov. 1, 1972)

(The following Arizona counties were covered individually through the use of earlier dates.)

  - Apache County (Nov. 1, 1968)
  - Cochise County (Nov. 1, 1968)
  - Coconino County (Nov. 1, 1968)
  - Mohave County (Nov. 1, 1968)
  - Navajo County (Nov. 1, 1968)
  - Pima County (Nov. 1, 1968)
  - Pinal County (Nov. 1, 1968)
  - Santa Cruz County (Nov. 1, 1968)
  - Yuma County (Nov. 1, 1964
- California (the following counties only)
  - Kings County (Nov. 1, 1972)
  - Merced County (Nov. 1, 1972)
  - Monterey County (Nov. 1, 1968)
  - Yuba County (Nov. 1, 1968)
- Colorado (the following county only)
  - El Paso (Nov. 1, 1972)
- Connecticut (the following towns only)
  - Groton Town (Nov. 1, 1968)
  - Mansfield Town (Nov. 1, 1968)
  - Southbury Town (Nov. 1, 1968)
- Florida (the following counties only)
  - Collier County (Nov. 1, 1972)
  - Hardee County (Nov. 1, 1972)
  - Hendry County (Nov. 1, 1972)
  - Hillsborough County (Nov. 1, 1972)
  - Monroe County (Nov. 1, 1972)
- Georgia (statewide) (Nov. 1, 1964)
- Hawaii (the following county only)
  - Honolulu County (Nov. 1, 1964)
- Idaho (the following county only)
  - Elmore County (Nov. 1, 1968)
- Louisiana (statewide) (Nov. 1, 1964)
- Massachusetts (the following towns only)
  - Amherst Town (Nov. 1, 1968)
  - Ayer Town (Nov. 1, 1968)
  - Belchertown (Nov. 1, 1968)
  - Bourne Town (Nov. 1, 1968)
  - Harvard Town (Nov. 1, 1968)
  - Sandwich Town (Nov. 1, 1968)
  - Shirley Town (Nov. 1, 1968)

Sunderland Town (Nov. 1, 1968)
Wrentham Town (Nov. 1, 1968)
Michigan (the following townships only)
Buena Vista Township (Saginaw County) (Nov. 1, 1972)
Clyde Township (Allegan County) (Nov. 1, 1972)
Mississippi (statewide) (Nov. 1, 1964)
New Hampshire (the following political subdivisions only)
Antrim Town (Nov. 1, 1968)
Benton Town (Nov. 1, 1968)
Boscawen Town (Nov. 1, 1968)
Millsfield Township (Nov. 1, 1968)
Newington Town (Nov. 1, 1968)
Pinkhams Grant (Nov. 1, 1968)
Rindge Town (Nov. 1, 1968)
Stewartstown (Nov. 1, 1968)
Stratford Town (Nov. 1, 1968)
Unity Town (Nov. 1, 1968)
New York (the following counties only)
Bronx County (Nov. 1, 1968)
Kings County (Nov. 1, 1968)
New York County (Nov. 1, 1968)
North Carolina (the following counties only)
Anson County (Nov. 1, 1964)
Beaufort County (Nov. 1, 1964)
Bertie County (Nov. 1, 1964)
Bladen County (Nov. 1, 1964)
Camden County (Nov. 1, 1964)
Caswell County (Nov. 1, 1964)
Chowan County (Nov. 1, 1964)
Cleveland County (Nov. 1, 1964)
Craven County (Nov. 1, 1964)
Cumberland County (Nov. 1, 1964)
Edgecombe County (Nov. 1, 1964)
Franklin County (Nov. 1, 1964)
Gaston County (Nov. 1, 1964)
Gates County (Nov. 1, 1964)
Granville County (Nov. 1, 1964)
Greene County (Nov. 1, 1964)
Guilford County (Nov. 1, 1964)
Halifax County (Nov. 1, 1964)
Harnett County (Nov. 1, 1964)
Hertford County (Nov. 1, 1964)
Hoke County (Nov. 1, 1964)
Jackson County (Nov. 1, 1972)
Lee County (Nov. 1, 1964)
Lenoir County (Nov. 1, 1964)
Martin County (Nov. 1, 1964)
Nash County (Nov. 1, 1964)
Northampton County (Nov. 1, 1964)
Onslow County (Nov. 1, 1964)
Pasquotank County (Nov. 1, 1964)
Perquimans County (Nov. 1, 1964)
Person County (Nov. 1, 1964)
Pitt County (Nov. 1, 1964)
Robeson County (Nov. 1, 1964)
Rockingham County (Nov. 1, 1964)
Scotland County (Nov. 1, 1964)
Union County (Nov. 1, 1964)
Vance County (Nov. 1, 1964)
Washington County (Nov. 1, 1964)
Wayne County (Nov. 1, 1964)
Wilson County (Nov. 1, 1964)
South Carolina (statewide) (Nov. 1, 1964)
South Dakota (the following counties only)
Shannon County (Nov. 1, 1972)
Todd County (Nov. 1, 1972)
Texas (statewide) (Nov. 1, 1972)
Virginia (statewide) (Nov. 1, 1964)
Wyoming (the following county only)
Campbell County (Nov. 1, 1968)

[46 FR 872, Jan. 5, 1981; Order No. 921a-80, 46 FR 9571, Jan. 29, 1981]

PART 52—PROCEEDINGS BEFORE U.S. MAGISTRATES

Sec.
52.01 Civil proceedings: Special master, pretrial, trial, appeal.
52.02 Criminal proceedings: Pretrial, trial.

AUTHORITY: 5 U.S.C. 301, 18 U.S.C. 3401(f).

§ 52.01 Civil proceedings: Special master, pretrial, trial, appeal.

(a) Sections 636(b) and (c) of Title 28 govern pretrial and case-dispositive civil jurisdiction of magistrates, as well as service by magistrates as special masters.

(1) With the consent of the parties, a judge may designate a magistrate to serve as special master in any civil case without regard to the limitations of Rule 53(b), Federal Rules of Civil Procedure. 28 U.S.C. 636(b)(2). As a consequence, such referrals are not subject to the "exceptional circumstances" requirement of that Rule as interpreted in *LaBuy v. Howes Leather Co.*, 352 U.S. 249 (1957). *See also Mathews v. Weber*, 423 U.S. 261, 273–75 (1976).

(2) A judge of the district court, without the parties' consent, may designate a magistrate to hear and determine civil pretrial matters pending before the court, except for six named classes of motions; as to the latter, the magistrate may conduct a hearing and recommend a decision to the judge. 28 U.S.C. 636(b)(1)(A), (B).

(3) Upon the consent of the parties, a magistrate may conduct any or all proceedings in a jury or non-jury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the court. 28 U.S.C. 636(c)(1). A part-time magistrate, who does not serve as full-time judicial officer by virtue of bankruptcy or other duties, may exercise this jurisdiction only if the parties specifically so request in writing; if the

five-year bar membership requirement of 28 U.S.C. 631(b)(1) is satisfied; and if the chief judge of the district "certifies that a full-time magistrate is not reasonably available in accordance with guidelines established by the judicial council of the circuit." 28 U.S.C. 636(c)(1). A full- or part-time magistrate not appointed under merit selection standards and procedures, 28 U.S.C. 631(b)(5), must be "certified as qualified to exercise the Act's jurisdiction by the judicial council of the circuit in which the magistrate serves." Pub. L. 96-82, 3(f), 93 Stat. 645.

(4) At the time of the reference to a magistrate described in paragraph (3), the parties may also consent to the taking of any appeal to the district court rather than to the court of appeals. 28 U.S.C. 636(c)(3), (4). In such a circumstance, further review may be had in the court of appeals upon a petition for leave to appeal. 28 U.S.C. 636(c)(5). Review by the court of appeals is not limited to petitions presenting "important" questions of law. H.R. Rep. No. 96-287, 96th Cong., 1st Sess. 12-13 (1979).

(b) It is the policy of the Department of Justice to encourage the use of magistrates to assist the district courts in resolving civil disputes. In conformity with this policy, the attorney for the government is encouraged to accede to a referral of an entire civil action for disposition by a magistrate, or to consent to designation of a magistrate as special master, if the attorney determines that such a referral or designation is in the interest of the United States. In making this determination, the attorney shall consider all relevant factors, including—

(1) The complexity of the matter;

(2) The relief sought;

(3) The amount in controversy;

(4) The novelty, importance and nature of the issues raised;

(5) The likelihood that referral to or designation of the magistrate will expedite resolution of the litigation;

(6) The experience and qualifications of the magistrate; and

(7) The possibility of the magistrate's actual or apparent bias or conflict of interest.

In general, it is not in the interest of the United States to consent to a trial before a magistrate in a case involving significant rights of large numbers of persons, or complex, sensitive, or unusually important issues. In making a determination under this subsection the attorney shall consult with the appropriate Assistant Attorney General as provided in paragraph (d) of this section.

(c) In determining whether to consent to having an appeal taken to the district court rather than to the court of appeals, the attorney for the government should consider all relevant factors including—

(1) The amount in controversy;

(2) The importance of the questions of law involved;

(3) The desirability of expeditious review of the magistrate's judgment.

In making a determination under this subsection the attorney shall consult with the appropriate Assistant Attorney General as provided in Paragraph (d) of this section.

(d) The attorney for the government shall, except in those cases in which redelegation authority has been exercised under 28 CFR 0.168, consult with the Assistant Attorney General having supervisory authority over the subject matter in determining whether to consent to a trial before a magistrate or to an appeal to the district court rather than to the court of appeals.

[Order No. 903-80, 45 FR 50563, July 30, 1980]

§ 52.02 Criminal proceedings: Pretrial, trial.

(a) A judge of the district court, without the parties' consent, may designate a magistrate to hear and determine criminal pretrial matters pending before the court, except for two named classes of motions; as to the latter, the magistrate may conduct a hearing and recommend a decision to the judge. 28 U.S.C. 636(b)(1) (A), (B).

(b) When specially designated by the court to exercise such jurisdiction, a magistrate may try, and impose sentence for, any misdemeanor if he has properly and fully advised the defendant that he has a right to elect "trial, judgment, and sentencing by a judge of the district court and * * * may have a right to trial by jury before a district judge or magistrate," and has obtained the defendant's written consent to be tried by the magistrate. 18 U.S.C. 3401 (a), (b). The court may order that proceedings be conducted before a district judge rather than a magistrate upon its own motion or, for good cause shown upon petition by the attorney for the government. The petition should note "the novelty, importance, or complexity of the case, or other pertinent factors * * *". 18 U.S.C. 3401(f).

(1) If the attorney for the government determines that the public interest is better served by trial before a district judge, the attorney may petition the district court for such an order after consulting with the appropriate Assistant Attorney General as provided in paragraph (2) of this section. In making this determination, the attorney shall consider all relevant factors including—

(A) The novelty of the case with respect to the facts, the statute being enforced, and the application of the statute to the facts;

(B) The importance of the case in light of the nature and seriousness of the offense charged;

(C) The defendant's history of criminal activity, the potential penalty upon conviction, and the purposes to be served by prosecution, including punishment, deterrence, rehabilitation, and incapacitation;

(D) The factual and legal complexity of the case and the amount and nature of the evidence to be presented;

(E) The desirability of prompt disposition of the case; and

(F) The experience and qualifications of the magistrate, and the possibility of the magistrate's actual or apparent bias or conflict of interest.

(2) The attorney for the government shall consult with the Assistant Attorney General having supervisory authority over the subject matter in determining whether to petition for trial before a district judge in a case involving a violation of 2 U.S.C. 192, 441j(a); 18 U.S.C. 210, 211, 242, 245, 594, 597, 599, 600, 601, 1304, 1504, 1508, 1509, 2234, 2235, 2236; or 42 U.S.C. 3631.

(3) In a case in which the government petitions for trial before a district judge, the attorney for the government shall forward a copy of the petition to the Assistant Attorney General having supervisory authority over the subject matter and, if the petition is denied, shall promptly notify the Assistant Attorney General.

[Order No. 903-80, 45 FR 50564, July 30, 1980]

PART 55—IMPLEMENTATION OF THE PROVISIONS OF THE VOTING RIGHTS ACT REGARDING LANGUAGE MINORITY GROUPS

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Appendix—Jurisdictions Covered Under Secs. 4(f)(4) and 203(c) of the Voting Rights Act of 1965, as Amended by the Voting Rights Act Amendments of 1975

Authority: 5 U.S.C. 301, 28 U.S.C. 509, 510, Pub. L. 94-73.

Source: Order No. 655-76, 41 FR 29998, July 20, 1976, unless otherwise noted.

Subpart A—General Provisions

§ 55.1 Definitions.

For purposes of this part—

(a) "Act" means the Voting Rights Act of 1965, 79 Stat. 437, as amended by the Voting Rights Act Amendments of 1970, 84 Stat. 314, and the Voting Rights Act Amendments of 1975, Pub. L. 94-73, 42 U.S.C. 1973 *et seq.* Section numbers, such as "Section 14(c)(3)," refer to the Act.

(b) "Attorney General" means the Attorney General of the United States.

(c) "Language minority" or "Language minority group" means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage. Sections 14(c)(3), 203(e). For the purposes of the Act the following Asian American groups are considered language minority groups: Chinese Americans, Filipino Americans, Japanese Americans, and Korean Americans. As used in this part, "applicable language minority group" refers to the group or groups listed in the determinations as to coverage published in the Federal Register. As used in this part, each of the seven following groups is considered a "single language minority group": American Indians, Alaskan Natives, persons of Spanish heritage, Chinese Americans, Filipino Americans, Japanese Americans, and Korean Americans.

(d) "Political subdivision" means: "* * * any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting." Section 14(c)(2).

§ 55.2 Purpose; standards for measuring compliance.

(a) The purpose of this part is to set forth the Attorney General's interpretation of the provisions of the Voting Rights Act, as amended by Pub. L. 94-73 (1975), which require certain States and political subdivisions to conduct elections in the language of certain "language minority groups" in addition to English.

(b) In the Attorney General's view the objective of the Act's provisions is to enable members of applicable language minority groups to participate effectively in the electoral process. This part establishes two basic standards by which the Attorney General will measure compliance: (1) That materials and assistance should be provided in a way designed to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities; and (2) that an affected jurisdiction should take all reasonable steps to achieve that goal.

(c) The determination of what is required for compliance with Section 4(f)(4) and Section 203(c) is the responsibility of the affected jurisdiction. These guidelines should not be used as a substitute for analysis and decision by the affected jurisdiction.

(d) Jurisdictions covered under Section 4(f)(4) of the Act are subject to the preclearance requirements of Section 5. See Part 51 of this Chapter. Such jurisdictions have the burden of establishing to the satisfaction of the Attorney General or to the United States District Court for the District of Columbia that changes made in their election laws and procedures in order to comply with the requirements of Section 4(f)(4) are not discriminatory under the terms of Section 5. However, Section 5 expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of the changes.

(e) Jurisdictions covered solely under Section 203(c) of the Act are not subject to the preclearance requirements of Section 5, nor is there a Federal apparatus available for preclearance of Section 203(c) compliance activities. The Attorney General will not preclear jurisdictions' proposals for compliance with Section 203(c).

(f) Consideration by the Attorney General of a jurisdiction's compliance with the requirements of Section 4(f)(4) occurs in the review pursuant to Section 5 of the Act of changes with respect to voting, in the consideration of the need for litigation to enforce the requirements of Section 4(f)(4), and in the defense of suits for termination of coverage under Section 4(f)(4). Consideration by the Attorney General of a jurisdiction's compliance with the requirements of Section 203(c) occurs in the consideration of the need for litigation to enforce the requirements of Section 203(c).

(g) In enforcing the Act—through the Section 5 preclearance review process, through litigation, and through defense of suits for termination of coverage under Section 4(f)(4)—the Attorney General will follow the general policies set forth in this part.

(h) This part is not intended to preclude affected jurisdictions from taking additional steps to further the policy of the Act. By virtue of the Supremacy Clause of Art. VI of the Constitution, the provisions of the Act override any inconsistent State law.

§ 55.3 Statutory requirements.

The Act's requirements concerning the conduct of elections in languages in addition to English are contained in Section 4(f)(4) and Section 203(c). These sections state that whenever a jurisdiction subject to their terms "provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in * * * English. * * *"

Subpart B—Nature of Coverage

§ 55.4 Effective date; list of covered jurisdictions.

(a) The 1975 Amendments took effect upon the date of their enactment, August 6, 1975.

(1) The requirements of Section 4(f)(4) take effect upon publication in the FEDERAL REGISTER of the requisite determinations of the Director of the Census and the Attorney General. Such determinations are not reviewable in any court.

(2) The requirements of Section 203(c) take effect upon publication in the FEDERAL REGISTER of the requisite determinations of the Director of the Census. Such determinations are not reviewable in any court.

(b) Jurisdictions determined to be covered under Section 4(f)(4) or Section 203(c) are listed, together with the language minority group with respect to which coverage was determined, in the Appendix to this part. Any additional determinations of coverage under either Section 4(f)(4) or Section 203(c) will be published in the FEDERAL REGISTER.

§ 55.5 Coverage under Section 4(f)(4).

(a) *Coverage formula.* Section 4(f)(4) applies to any State or political subdivision in which (1) over five percent of the voting-age citizens were, on November 1, 1972, members of a single language minority group, (2) registration and election materials were provided only in English on November 1, 1972, and (3) fewer than 50 percent of the voting-age citizens were registered to vote or voted in the 1972 Presidential election.

All three conditions must be satisfied before coverage exists under Section 4(f)(4).[1]

(b) Coverage may be determined with regard to Section 4(f)(4) on a statewide or political subdivision basis.

(1) Whenever the determination is made that the bilingual requirements of Section 4(f)(4) are applicable to an entire State, these requirements apply to each of the State's political subdivisions as well as to the State. In other words, each political subdivision within a covered State is subject to the same requirements as the State.

(2) Where an entire State is not covered under Section 4(f)(4), individual political subdivisions may be covered.

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[1] Coverage is based on Sections 4(b) (third sentence), 4(c), and 4(f)(3).

§ 55.6 Coverage under Section 203(c).

There are two ways in which coverage under Section 203(c) may be established.[2]

(a) Under the first method, a preliminary determination is made by the Director of the Census of States in which more than five percent of the voting-age citizens are members of a single language minority group the illiteracy rate of which, in the particular State, is greater than the national illiteracy rate. In these States, a particular political subdivision is covered with respect to the State's applicable language minority group if five percent or more of the voting-age citizens of the political subdivision are members of the applicable language minority group.

(b) The second method of establishing coverage is used with respect to language minority groups not reached by the preliminary determination based on statewide data. Under the second method, covered political subdivisions are those in which more than five percent of the voting-age citizens are members of a single language minority group the illiteracy rate of which, in the particular political subdivision, is greater than the national illiteracy rate.

(c) For the purpose of determinations of coverage under Section 203(c), "illiteracy means the failure to complete the fifth primary grade." Section 203(b).

§ 55.7 Termination of coverage.

(a) *Section 4(f)(4)*. A covered jurisdiction may terminate coverage under Section 4(f)(4) (via Section 4(a)) by obtaining from the United States District Court for the District of Columbia a declaratory judgment that there has been no discriminatory use of a test or device for a period of ten years. The term "test or device" is defined in Section 4(c) and Section 4(f)(3). When an entire State is covered in this regard, only the State, and not individual political subdivisions within the State, may bring an action to terminate coverage.

(b) *Section 203(c)*. The requirements of Section 203(c) apply until August 6, 1985. A covered jurisdiction may terminate such coverage earlier if it can prove in a declaratory judgment action in a United States district court, that the illiteracy rate of the applicable language minority group is equal to or less than the national illiteracy rate.

§ 55.8 Relationship between Section 4(f)(4) and Section 203(c).

(a) The statutory requirements of Section 4(f)(4) and Section 203(c) regarding minority language material and assistance are essentially identical.

(b) Jurisdictions subject to the requirements of Section 4(f)(4)—but not jurisdictions subject only to the requirements of Section 203(c)—are also subject to the Act's special provisions, such as Section 5 (regarding preclearance of changes in voting laws) and Section 6 (regarding Federal examiners).[3] See Part 51 of this Chapter.

(c) Although the coverage formulas applicable to Section 4(f)(4) and Section 203(c) are different, a political subdivision may be included within both of the coverage formulas. Under these circumstances, a judgment terminating coverage of the jurisdiction under one provision would not have the effect of terminating coverage under the other provision.

§ 55.9 Coverage of political units within a county.

Where a political subdivision (e.g., a county) is determined to be subject to Section 4(f)(4) or Section 203(c), all political units that hold elections within that political subdivision (e.g., cities, school districts) are subject to the same requirements as the political subdivision.

§ 55.10 Types of elections covered.

(a) *General.* The language provisions of the Act apply to registration for and voting in any type of election, whether it is a primary, general or special election. Section 14(c)(1). This includes elections of officers as well as elections regarding such matters as bond issues, constitutional amendments and referendums. Federal, State and local elections are covered as are elections of special districts, such as school districts and water districts.

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[2] The criteria for coverage are contained in Section 203(b).

[3] In addition, a jurisdiction covered under Section 203(c) but not under Section 4(f)(4) is subject to the Act's special provisions if it was covered under Section 4(b) prior to the 1975 Amendments to the Act.

(b) *Elections for statewide office.* If an election conducted by a county relates to Federal or State offices or issues as well as county offices or issues, a county subject to the bilingual requirements must insure compliance with those requirements with respect to all aspects of the election, i.e., the minority language material and assistance must deal with the Federal and State offices or issues as well as county offices or issues.

(c) *Multi-county districts.* Regarding elections for an office representing more than one county, e.g., State legislative districts and special districts that include portions of two or more counties, the bilingual requirements are applicable on a county-by-county basis. Thus, minority language material and assistance need not be provided by the government in counties not subject to the bilingual requirements of the Act.

Subpart C—Determining the Exact Language

§ 55.11 General.

The requirements of Section 4(f)(4) or Section 203(c) apply with respect to the languages of language minority groups. The applicable groups are indicated in the determinations of the Attorney General or the Director of the Census. This Subpart relates to the view of the Attorney General concerning the determination by covered jurisdictions of precisely the language to be employed. In enforcing the Act, the Attorney General will consider whether the languages, forms of languages, or dialects chosen by covered jurisdictions for use in the electoral process enable members of applicable language minority groups to participate effectively in the electoral process. It is the responsibility of covered jurisdictions to determine what languages, forms of languages, or dialects will be effective.

§ 55.12 Language used for written material.

(a) *Language minority groups having more than one language.* Some language minority groups, for example, Filipino Americans, have more than one language other than English. A jurisdiction required to provide election materials in the language of such a group need not provide materials in more than one language other than English. The Attorney General will consider whether the language that is used for election materials is the one most widely used by the jurisdiction's voting-age citizens who are members of the language minority group.

(b) *Languages with more than one written form.* Some languages, for example, Japanese, have more than one written form. A jurisdiction required to provide election materials in such a language need not provide more than one version. The Attorney General will consider whether the particular version of the language that is used for election materials is the one most widely used by the jurisdiction's voting-age citizens who are members of the language minority group.

(c) *Unwritten Languages.* Many of the languages used by language minority groups, for example, by some American Indians and Alaskan Natives, are unwritten. With respect to any such language, only oral assistance and publicity are required. Even though a written form for a language may exist, a language may be considered unwritten if it is not commonly used in a written form. It is the responsibility of the covered jurisdiction to determine whether a language should be considered written or unwritten.

§ 55.13 Language used for oral assistance and publicity.

(a) *Languages with more than one dialect.* Some languages, for example, Chinese, have several dialects. Where a jurisdiction is obligated to provide oral assistance in such a language, the jurisdiction's obligation is to ascertain the dialects that are commonly used by members of the applicable language minority group in the jurisdiction and to provide oral assistance in such dialects. (See § 55.20.)

(b) *Language minority groups having more than one language.* In some jurisdictions members of an applicable language minority group speak more than one language other than English. Where a jurisdiction is obligated to provide oral assistance in the language of such a group, the jurisdiction's obligation is to ascertain the languages that are commonly used by members of that group in the jurisdiction and to provide oral assistance in such languages. (See § 55.20)

Subpart D—Minority Language Materials and Assistance

§ 55.14 General.

(a) This Subpart sets forth the views of the Attorney General with respect to the requirements of Section 4(f)(4) and Section 203(c) concerning the provision of minority language materials and assistance and some of the factors that the Attorney General will consider in carrying out his responsibilities to enforce Section 4(f)(4) and Section 203(c). Through the use of his authority under Section 5 and his authority to bring suits to enforce Section 4(f)(4) and Section 203(c), the Attorney General will seek to prevent or remedy discrimination against members of language minority groups based on the failure to use the applicable minority language in the electoral process. The Attorney General also has the responsibility to defend against suits brought for the termination of coverage under Section 4(f)(4) and Section 203(c).

(b) In discharging these responsibilities the Attorney General will respond to complaints received, conduct on his own initiative inquiries and surveys concerning compliance, and undertake other enforcement activities.

(c) It is the responsibility of the jurisdiction to determine what actions by it are required for compliance with the requirements of Section 4(f)(4) and Section 203(c) and to carry out these actions.

§ 55.15 Affected activities.

The requirements of Sections 4(f)(4) and 203(c) apply with regard to the provision of "any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots." The basic purpose of these requirements is to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities. Accordingly, the quoted language should be broadly construed to apply to all stages of the electoral process, from voter registration through activities related to conducting elections, including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process.

§ 55.16 Standards and proof of compliance.

Compliance with the requirements of Section 4(f)(4) and Section 203(c) is best measured by results. A jurisdiction is more likely to achieve compliance with these requirements if if has worked with the cooperation of and to the satisfaction of organizations representing members of the applicable language minority group. In planning its compliance with Section 4(f)(4) or Section 203(c), a jurisdiction may, where alternative methods of compliance are available, use less costly methods if they are equivalent to more costly methods in their effectiveness.

§ 55.17 Targeting.

The term "targeting" is commonly used in discussions of the requirements of Section 4(f)(4) and Section 203(c). "Targeting" refers to a system in which the minority language materials or assistance required by the Act are provided to less than all persons or registered voters. It is the view of the Attorney General that a targeting system will normally fulfill the Act's minority language requirements if it is designed and implemented in such a way that language minority group members who need minority language materials and assistance receive them.

§ 55.18 Provision of minority language materials and assistance.

(a) *Materials provided by mail.* If materials provided by mail (or by some comparable form of distribution) generally to residents or registered voters are not all provided in the applicable minority language, the Attorney General will consider whether an effective targeting system has been developed. For example, a separate mailing of materials in the minority language to persons who are likely to need them or to residents of neighborhoods in which such a need is likely to exist, supplemented by a notice of the availability of minority language materials in the general mailing (in English and in the applicable minority language) and by other publicity regarding the availability of such materials may be sufficient.

(b) *Public notices.* The Attorney General will consider whether public notices and announcements of electoral activities are handled in a manner that provides members of the applicable language minority group an effective opportunity to be informed about electoral activities.

(c) *Registration.* The Attorney General will consider whether the registration system is conducted in such a way that members of the applicable language minority group have an effective opportunity to register. One method of accomplishing this is to provide, in the applicable minority language, all notices, forms and other materials provided to potential registrants and to have only bilingual persons as registrars. Effective results may also be obtained, for example, through the use of deputy registrars who are members of the applicable language minority group and the use of decentralized places of registration, with minority language materials available at places where persons who need them are most likely to come to register.

(d) *Polling place activities.* The Attorney General will consider whether polling place activities are conducted in such a way that members of the applicable language minority group have an effective opportunity to vote. One method of accomplishing this is to provide all notices, instructions, ballots, and other pertinent materials and oral assistance in the applicable minority language. If very few of the registered voters scheduled to vote at a particular polling place need minority language materials or assistance, the Attorney General will consider whether an alternative system enabling those few to cast effective ballots is available.

(e) *Publicity.* The Attorney General will consider whether a covered jurisdiction has taken appropriate steps to publicize the availability of materials and assistance in the minority language. Such steps may include the display of appropriate notices, in the minority language, at voter registration offices, polling places, etc., the making of announcements over minority language radio or television stations, the publication of notices in minority language newspapers, and direct contact with language minority group organizations.

[Order No. 655-76, 41 FR 29998, July 20, 1976, as amended by Order No. 733-77, 42 FR 35970, July 13, 1977]

§ 55.19 Written materials.

(a) *Types of materials.* It is the obligation of the jurisdiction to decide what materials must be provided in a minority language. A jurisdiction required to provide minority language materials is only required to publish in the language of the applicable language minority group materials distributed to or provided for the use of the electorate generally. Such materials include, for example, ballots, sample ballots, informational materials, and petitions.

(b) *Accuracy, completeness.* It is essential that material provided in the language of a language minority group be clear, complete and accurate. In examining whether a jurisdiction has achieved compliance with this requirement, the Attorney General will consider whether the jurisdiction has consulted with members of the applicable language minority group with respect to the translation of materials.

(c) *Ballots.* The Attorney General will consider whether a jurisdiction provides the English and minority language versions on the same document. Lack of such bilingual preparation of ballots may give rise to the possibility, or to the appearance, that the secrecy of the ballot will be lost if a separate minority language ballot or voting machine is used.

(d) *Voting machines.* Where voting machines that cannot mechanically accommodate a ballot in English and in the applicable minority language are used, the Attorney General will consider whether the jurisdiction provides sample ballots for use in the polling booths. Where such sample ballots are used the Attorney General will consider whether they contain a complete and accurate translation of the English ballots, and whether they contain or are accompanied by instructions in the minority language explaining the operation of the voting machine. The Attorney General will also consider whether the sample ballots are displayed so that they are clearly visible and at the same level as the machine ballot on the inside of the polling booth, whether the sample ballots are identical in layout to the machine ballots, and whether their size and typeface are the same as that appearing on the machine ballots. Where space limitations preclude affixing the translated sample ballots to the inside of polling booths, the Attorney General will consider whether language minority group voters are allowed to take the sample ballots into the voting booths.

§ 55.20 Oral assistance and publicity.

(a) *General.* Announcements, publicity, and assistance should be given in oral form to the extent needed to enable members of the applicable language minority group to participate effectively in the electoral process.

(b) *Assistance.* The Attorney General will consider whether a jurisdiction has given sufficient attention to the needs of language minority group members who cannot effectively read either English or the applicable minority language and to the needs of members of language minority groups whose languages are unwritten.

(c) *Helpers.* With respect to the conduct of elections, the jurisdiction will need to determine the number of helpers (i.e., persons to provide oral assistance in the minority language) that must be provided. In evaluating the provision of assistance, the Attorney General will consider such facts as the number of a precinct's registered voters who are members of the applicable language minority group, the number of such persons who are not proficient in English, and the ability of a voter to be assisted by a person of his own choice. The basic standard is one of effectiveness.

§ 55.21 Record keeping.

The Attorney General's implementation of the Act's provisions concernng language minority groups would be facilitated if each covered jurisdiction would maintain such records and data as will document its actions under those provisions, including, for example, records on such matters as alternatives considered prior to taking such actions, and the reasons for choosing the actions finally taken.

Subpart E—Preclearance

§ 55.22 Requirements of Section 5 of the Act.

For many jurisdictions, changes in voting laws and practices will be necessary in order to comply with Section 4(f)(4) or Section 203(c). If a jurisdiction is subject to the preclearance requirements of Section 5 (see § 55.8(b)), such changes must either be submitted to the Attorney General or be made the subject of a declaratory judgment action in the United States District Court for the District of Columbia. Procedures for the administration of Section 5 are set forth in Part 51 of this chapter.

Subpart F—Sanctions

§ 55.23 Enforcement by the Attorney General.

(a) The Attorney General is authorized to bring civil actions for appropriate relief against violations of the Act's provisions, including Section 4 and Section 203. See Sections 12(d) and 204.

(b) Also, certain violations may be subject to criminal sanctions. See Sections 11(a)-(c) and 205.

Subpart G—Comment on This Part

§ 55.24 Procedure.

These guidelines may be modified from time to time on the basis of experience under the Act and comments received from interested parties. The Attorney General therefore invites public comments and suggestions on these guidelines. Any party who wishes to make such suggestions or comments may do so by sending them to: Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530.

APPENDIX—JURISDICTIONS COVERED UNDER SECS. 4(f)(4) AND 203(c) OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED BY THE VOTING RIGHTS ACT AMENDMENTS OF 1975

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. (f)(4)	Coverage under sec. 203(c)
Alaska	Alaskan Natives [1].	
Election District 1		Alaskan Natives.
Election District 2		Do.
Election District 3		Do.
Election District 4		Do.
Election District 5		Do.
Election District 13		Do.
Election District 14		Do.
Election District 15		Do.
Election District 16		Do.
Election District 17		Do.
Election District 18		Do.
Election District 19		Do.
Election District 21		Do.
Election District 22		Do.
Arizona	Spanish heritage [1]	
Apache County	American Indian.	Spanish heritage, American Indian.
Cochise County		Spanish heritage.
Coconino County	American Indian.	American Indian, Spanish heritage.
Gila County		Do.
Graham County		Do.
Greenlee County		Spanish heritage.
Maricopa County		Do.
Mohave County		Do.
Navajo County	American Indian.	American Indian, Spanish heritage.
Pima County		Spanish heritage.
Pinal County	American Indian.	American Indian, Spanish heritage.
Santa Cruz County		Spanish heritage.
Arizona: (Cont'd)		
Yavapai County		Spanish heritage
Yuma County		Do.
California:		
Alameda County		Do.
Amador County		Do.
Colusa County		Do.
Contra Costa County.		Do.
Fresno County		Do.
Imperial County		Do.
Inyo County		American Indian.
Kern County		Spanish heritage.
Kings County	Spanish heritage.	Do.
Lassen County		Do.
Los Angeles County.		Do.
Madera County		Do.
Merced County	Spanish heritage.	Do.
Monterey County		Do.
Napa County		Do.
Orange County		Do.
Placer County		Do.
Riverside County		Do.
Sacramento County.		Do.
San Benito County		Do.
San Bernardino County.		Do.
San Diego County		Do.
San Francisco County.		Spanish heritage, Chinese American.
San Joaquin County.		Spanish heritage.
San Luis Obispo County.		Do.
San Mateo County		Do.
Santa Barbara County.		Do.
Santa Clara County.		Do.
Santa Cruz County		Do.
Sierra County		Do.
Solano County		Do.
Sonoma County		Do.
Stanislaus County		Do.
Sutter County		Do.
Tulare County		Do.
Tuolumne County		Do.
Ventura County		Do.
Yolo County		Do.
Yuba County	Spanish heritage.	Do.
Colorado:		
Adams County		Do.
Alamosa County		Do.
Archuleta County		Do.
Bent County		Do.
Boulder County		Do.
Chaffee County		Do.

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APPENDIX—JURISDICTIONS COVERED UNDER SECS. 4(f)(4) AND 203(c) OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED BY THE VOTING RIGHTS ACT AMENDMENTS OF 1975—Continued

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. (f)(4)	Coverage under sec. 203(c)
Colorado: (Cont'd)		
Clear Creek County.		Spanish heritage
Conejos County		Do.
Costilla County		Do.
Crowley County		Do.
Delta County		Do.
Denver County		Do.
Eagle County		Do.
El Paso County	Spanish heritage.	Do.
Fremont County		Do.
Huerfano County		Do.
Jackson County		Do.
Lake County		Do.
La Plata County		Do.
Las Animas County.		Do.
Mesa County		Do.
Moffat County		Do.
Montezuma County.		Spanish heritage, American Indian.
Montrose County		Spanish heritage.
Morgan County		Do.
Otero County		Do.
Prowers County		Do.
Pueblo County		Do.
Rio Grande County.		Do.
Saguache County		Do.
San Juan County		Do.
San Miguel County		Do.
Sedgwick County		Do.
Weld County		Do.
Connecticut:		Do.
Bridgeport Town (Fairfield County).		
Florida:		
Collier County	Spanish heritage.	Do.
Dade County		Do.
Glades County		American Indian.
Hardee County	Spanish heritage.	Spanish Heritage.
Hendry County	do	Do.
Hillsborough County.	do	Do.
Monroe County	do	Do.
Hawaii:		
Hawaii County		Filipino American, Japanese American.
Honolulu County		Chinese American, Filipino American.
Kauai County		Filipino American, Japanese American.
Maui County		Filipino American.
Idaho:		
Bingham County		American Indian.
Cassia County		Spanish heritage.
Kansas:		
Finney County		Spanish heritage
Grant County		Do.
Wichita County		Do.
Louisiana:		
St. Bernard Parish		Do.
Maine:		
Passamaquoddy Pleasant Point Indian Reservation (Washington County).		American Indian.
Michigan:		
Clyde Township (Allegan County).	Spanish heritage.	
Orangeville Township (Barry County).		Spanish heritage.
Sugar Island Township (Chippewa County).		American Indian.
Imlay Township (Lapeer County).		Spanish heritage.
Adrian City (Lenawee County).		Do.
Madison Township (Lenawee County).		Do.
Grant Township (Newaygo County).		Do.
Buena Vista Township (Saginaw County).	Spanish heritage.	Do.
Saginaw City (Saginaw County).		Do.
Minnesota:		
Beltrami County		American Indian.
Cass County		Do.
Mississippi:		
Neshoba County		Do.
Montana:		
Blaine County		Do.
Glacier County		Do.
Hill County		Do.
Lake County		Do.
Roosevelt County		Do.
Rosebud County		Do.
Valley County		Do.
Nebraska:		
Scotts Bluff County.		Spanish heritage.
Thurston County		American Indian.
Nevada:		
Elko County		Spanish heritage, American Indian.

APPENDIX—JURISDICTIONS COVERED UNDER SECS. 4(f)(4) AND 203(c) OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED BY THE VOTING RIGHTS ACT AMENDMENTS OF 1975—Continued

[Applicable language minority group(s)]

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APPENDIX—JURISDICTIONS COVERED UNDER SECS. 4(f)(4) AND 203(c) OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED BY THE VOTING RIGHTS ACT AMENDMENTS OF 1975—Continued

APPENDIX—JURISDICTIONS COVERED UNDER SECS. 4(f)(4) AND 203(c) OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED BY THE VOTING RIGHTS ACT AMENDMENTS OF 1975—Continued

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. (f)(4)	Coverage under sec. 203(c)
Nevada: (Cont'd)		
Mineral County		American Indian.
Nye County		Spanish heritage.
White Pine County		Do.
New Mexico:		
Bernalillo County		Do.
Catron County		Do.
Chaves County		Do.
Colfax County		Do.
Curry County		Do.
De Baca County		Do.
Dona Ana County		Do.
Eddy County		Do.
Grant County		Do.
Guadalupe County		Do.
Harding County		Do.
Hidalgo County		Do.
Lea County		Do.
Lincoln County		Do.
Los Alamos County.		Do.
Luna County		Do.
McKinley County		American Indian, Spanish heritage.
Mora County		Spanish heritage.
Otero County		Do.
Quay County		Do.
Rio Arriba County		American Indian, Spanish heritage.
Roosevelt County		Spanish heritage.
Sandoval County		American Indian, Spanish heritage.
San Juan County		Do.
San Miguel County		Spanish heritage.
Santa Fe County		Do.
Sierra County		Do.
Socorro County		Do.
Taos County		American Indian, Spanish heritage.
Torrance County		Spanish heritage.
Union County		Do.
Valencia County		American Indian, Spanish heritage.
New York:		
Bronx County	Spanish heritage.	Spanish heritage.
Kings County	do	Do.
New York County		Do.
North Carolina:		
Hoke County		American Indian.
Jackson County	American Indian.	Do.
Robeson County		Do.
Swain County		Do.
North Dakota:		
Benson County		Do.
Dunn County		Do.
McKenzie County		Do.
Mountrail County		Do.
Rolette County		Do.
Oklahoma:		
Adair County		Do.
Oklahoma: (Cont'd)		
Blaine County		American Indian.
Caddo County		Do.
Cherokee County		Do.
Choctaw County		Do.
Coal County		Do.
Craig County		Do.
Delaware County		Do.
Harmon County		Spanish heritage.
Hughes County		American Indian.
Johnston County		Do.
Latimer County		Do.
McCurtain County		Do.
McIntosh County		Do.
Mayes County		Do.
Okfuskee County		Do.
Okmulgee County		Do.
Osage County		Do.
Ottawa County		Do.
Pawnee County		Do.
Pushmataha County.		Do.
Rogers County		Do.
Seminole County		Do.
Sequoyah County		Do.
Tilman County		Spanish heritage.
Oregon:		
Jefferson County		American Indian.
Malheur County		Spanish heritage.
South Dakota:		
Bennett County		American Indian.
Charles Mix County.		Do.
Corson County		Do.
Lyman County		Do.
Mellette County		Do.
Shannon County	American Indian.	Do.
Todd County	Do	
Washabaugh County.		American Indian.
Texas:	Spanish heritage[1].	
Andrews County		Spanish heritage.
Aransas County		Do.
Atascosa County		Do.
Bailey County		Do.
Bandera County		Do.
Bastrop County		Do.
Bee County		Do.
Bell County		Do.
Bexar County		Do.
Blanco County		Do.
Borden County		Do.
Brazoria County		Do.
Brazos County		Do.
Brewster County		Do.
Briscoe County		Do.
Brooks County		Do.
Burleson County		Do.
Burnet County		Do.
Caldwell County		Do.

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APPENDIX—JURISDICTIONS COVERED UNDER SECS. 4(f)(4) AND 203(c) OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED BY THE VOTING RIGHTS ACT AMENDMENTS OF 1975—Continued

APPENDIX—JURISDICTIONS COVERED UNDER SECS. 4(f)(4) AND 203(c) OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED BY THE VOTING RIGHTS ACT AMENDMENTS OF 1975—Continued

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. (f)(4)	Coverage under sec. 203(c)
Texas: (Cont'd)		
Calhoun County		Spanish heritage
Cameron County		Do.
Castro County		Do.
Cochran County		Do.
Coke County		Do.
Colorado County		Do.
Comal County		Do.
Concho County		Do.
Coryell County		Do.
Cottle County		Do.
Crane County		Do.
Crockett County		Do.
Crosby County		Do.
Culberson County		Do.
Dallam County		Do.
Dawson County		Do.
Deaf Smith County		Do.
De Witt County		Do.
Dickens County		Do.
Dimmit County		Do.
Duval County		Do.
Ector County		Do.
Edwards County		Do.
Ellis County		Do.
El Paso County		Do.
Falls County		Do.
Fisher County		Do.
Floyd County		Do.
Foard County		Do.
Fort Bend County		Do.
Frio County		Do.
Gaines County		Do.
Galveston County		Do.
Garza County		Do.
Gillespie County		Do.
Glasscock County		Do.
Goliad County		Do.
Gonzales County		Do.
Grimes County		Do.
Guadalupe County		Do.
Hale County		Do.
Hall County		Do.
Hansford County		Do.
Harris County		Do.
Haskell County		Do.
Hays County		Do.
Hidalgo County		Do.
Hockley County		Do.
Howard County		Do.
Hudspeth County		Do.
Jackson County		Do.
Jeff Davis County		Do.
Jim Hogg County		Do.
Jim Wells County		Do.
Jones County		Do.
Karnes County		Do.
Kendall County		Do.
Kenedy County		Do.
Kerr County		Do.
Kimble County		Do.
Kinney County		Do.
Kleberg County		Spanish heritage
Knox County		Do.
Lamb County		Do.
Lampasas County		Do.
La Salle County		Do.
Live Oak County		Do.
Lubbock County		Do.
Lynn County		Do.
McCulloch County		Do.
McLennan County		Do.
McMullen County		Do.
Madison County		Do.
Martin County		Do.
Mason County		Do.
Matagorda County		Do.
Maverick County		Do.
Medina County		Do.
Menard County		Do.
Midland County		Do.
Milam County		Do.
Mitchell County		Do.
Moore County		Do.
Nolan County		Do.
Nueces County		Do.
Parmer County		Do.
Pecos County		Do.
Potter County		Do.
Presidio County		Do.
Reagan County		Do.
Real County		Do.
Reeves County		Do.
Retugio County		Do.
Robertson County		Do.
Runnels County		Do.
San Patricio County.		Do.
San Saba County		Do.
Schleicher County		Do.
Scurry County		Do.
Sherman County		Do.
Starr County		Do.
Sterling County		Do.
Sutton County		Do.
Swisher County		Do.
Taylor County		Do.
Terrell County		Do.
Terry County		Do.
Throckmorton County.		Do.
Tom Green County		Do.
Travis County		Do.
Upton County		Do.
Uvalde County		Do.
Val Verde County		Do.
Victoria County		Do.
Ward County		Do.
Webb County		Do.
Wharton County		Do.
Willacy County		Do.
Williamson County		Do.
Wilson County		Do.

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APPENDIX—JURISDICTIONS COVERED UNDER SECS. 4(f)(4) AND 203(c) OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED BY THE VOTING RIGHTS ACT AMENDMENTS OF 1975—Continued

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. (f)(4)	Coverage under sec. 203(c)
Texas: (Cont'd)		
Winkler County		Spanish heritage
Yoakum County		Do.
Zapata County		Do.
Zavala County		Do.
Utah:		
Carbon County		Do.
San Juan County		American Indian.
Tooele County		Spanish heritage.
Uintah County		American Indian.
Virginia:		
Charles City County.		Do.
Washington:		
Adams County		Spanish heritage.
Columbia County		Do.
Grant County		Do.
Okanogan County		American Indian.
Yakima County		Spanish heritage.
Wisconsin:		
Nashville Town (Forest County).		American Indian.
Bovina Town (Outagamie County).		Spanish heritage.
Oneida Town (Outagamie County).		American Indian.
Hayward City (Sawyer County).		Do.
Wyoming:		
Carbon County		Spanish heritage.
Fremont County		American Indian.
Laramie County		Spanish heritage.
Sweetwater County.		Do.
Washakie County		Do.

[1] Statewide coverage.

[Order No. 901-80, 45 FR 44268, July 1, 1980; 45 FR 46380, July 10, 1980; 45 FR 47423, July 15, 1980; Order No. 960-81, 46 FR 52359, Oct. 27, 1981]

PART 57—INVESTIGATION OF DISCRIMINATION IN THE SUPPLY OF PETROLEUM TO THE ARMED FORCES

Sec.

57.1 Responsibility for the conduct of litigation.
57.2 Responsibility for the conduct of investigations.
57.3 Scope and purpose of investigation; other sources of information.
57.4 Expiration date.

AUTHORITY: Sec. 816(b)(2), Pub. L. 94-106; 89 Stat. 531.

SOURCE: Order No. 644-76, 41 FR 12302, Mar. 25, 1976, unless otherwise noted.

§ 57.1 Responsibility for the conduct of litigation.

(a) In accord with 28 CFR 0.45(h), civil litigation under sec. 816 of the Department of Defense Appropriation Authorization Act, 1976, 10 U.S.C.A. 2304 note (hereafter the "Act"), shall be conducted under the supervision of the Assistant Attorney General in charge of the Civil Division.

(b) In accord with 28 CFR 0.55(a), prosecution, under section 816(f) of the Act, of criminal violations shall be conducted under the supervision of the Assistant Attorney General in charge of the Criminal Division.

§ 57.2 Responsibility for the conduct of investigations.

(a) When an instance of alleged "discrimination" in violation of section 816(b)(1) of the Act is referred to the Department of Justice by the Department of Defense, the matter shall be assigned initially to the Civil Division.

(b)(1) If the information provided by the Department of Defense indicates that a non-criminal violation may have occurred and further investigation is warranted, such investigation shall be conducted under the supervision of the Assistant Attorney General in charge of the Civil Division.

(2) If the information provided by the Department of Defense indicates that a criminal violation under section 816(f) of the Act may have occurred, the Civil Division shall refer the matter to the Criminal Division. If it is determined that further investigation of a possible criminal violation is warranted, such investigation shall be conducted under the supervision of the Assistant Attorney General in charge of the Criminal Division.

(3) If a referral from the Department of Defense is such that both civil and criminal proceedings may be warranted, responsibility for any further investigation may be determined by the Deputy Attorney General.

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§ 57.3 Scope and purpose of investigation; other sources of information.

(a) The authority granted the Attorney General by section 816(d)(1) of the Act (e.g., authority to inspect books and records) shall not be utilized until an appropriate official has defined, in an appropriate internal memorandum, the scope and purpose of the particular investigation.

(b) There shall be no use, with respect to particular information, of the authority granted by section 816(d)(1) of the Act until an appropriate official has determined that the information in question is not available to the Department of Justice from any other Federal agency or other responsible agency (e.g., a State agency).

(c) For purposes of this section, "appropriate official" means the Assistant Attorney General in charge of the division conducting the investigation, or his delegate.

§ 57.4 Expiration date.

This part shall remain in effect until expiration, pursuant to section 816(h) of the Act, of the Attorney General's authority under section 816 of the Act.

PART 58—REGULATIONS RELATING TO THE BANKRUPTCY REFORM ACT OF 1978

Sec.

58.1 Authorization to establish panels of private trustees.
58.2 Authorization to appoint standing trustees.
58.3 Qualification for membership on panels of private trustee.
58.4 Qualification for appointment as standing trustees.
58.5 Non-discrimination in appointment.

Authority: 28 U.S.C. 509, 510, 588(d).

Source: Order No. 921-80, 45 FR 82631, Dec. 16, 1980, unless otherwise noted.

§ 58.1 Authorization to establish panels of private trustees.

(a) Each United States Trustee is authorized to establish a panel of private trustees (the "panel") pursuant to 28 U.S.C. 588(a)(1).

(b) Each United States Trustee is authorized, with the approval of the Director, Executive Office for United States Trustees (the "Director") to increase or decrease the total membership of the panel. In addition, each U.S. Trustee, with the approval of the Director, is authorized to institute a system of rotation of membership or the like to achieve diversity of experience, geographical distribution or other characteristics among the persons on the panel.

§ 58.2 Authorization to appoint standing trustees.

Each United States Trustee is authorized, subject to the approval of the Deputy Attorney General, or his delegate, to appoint and remove one or more standing trustees to serve in cases under Chapter 13 of Title 11, United States Code.

[Order No. 921-80, 45 FR 82631, Dec. 16, 1980, as amended by Order No. 960-81, 46 FR 52360, Oct. 27, 1981]

§ 58.3 Qualification for membership on panels of private trustees.

(a) To be eligible for appointment to the panel and to retain eligibility therefor, an individual must possess the qualifications described in paragraph (b) of this section in addition to any other statutory qualifications. A corporation or partnership may qualify as an entity for appointment to the private panel. However, each person who, in the opinion of the United States Trustee or of the Director, performs duties as trustee on behalf of a corporation or partnership must individually meet the standards described in paragraph (b) of this section, except that each United States Trustee, with the approval of the Director, shall have the discretion to waive the applicability of paragraph (b)(6) of this section as to any individual in a non-supervisory position. No professional corporation, partnership, or similar entity organized for the practice of law or accounting shall be eligible to serve on the panel.

(b) The qualifications for membership on the panel are as follows:

(1) Possess integrity and good moral character.

(2) Be physically and mentally able to satisfactorily perform a trustee's duties.

(3) Be courteous and accessible to all parties with reasonable inquiries or comments about a case for which such individual is serving as private trustee.

(4) Be free of prejudices against any individual, entity, or group of individuals or entities which would interfere with unbiased performance of a trustee's duties.

(5) Not be related by affinity or consanguinity within the degree of first cousin to any employee of the Executive Office for United States Trustees of the Department of Justice, or to any employee of the office of the United States Trustee for the district in which he or she is applying.

(6)(i) Be a member in good standing of the bar of the highest court of a state or of the District of Columbia; OR

(ii) Be a certified public accountant; OR

(iii) Hold a bachelor's degree from a full four-year course of study (or the equivalent) of an accredited college or university (accredited as described in Part II, § III of Handbook X118 promulgated by the United States Office of Personnel Management) with a major in a business-related field of study or at least 20 semester-hours of business-related courses; or hold a master's or doctoral degree in a business-related field of study from a college or university of the type described above; OR

(iv) Be a senior law student or candidate for a master's degree in business administration recommended by the relevant law school or business school dean and working under the direct supervision of:

(A) A member of a law school faculty; or

(B) A member of the panel of private trustees; or

(C) A member of a program established by the local bar association to provide clinical experience to students; OR

(v) Have equivalent experience as deemed acceptable by the United States Trustee.

(7) Be willing to provide reports as required by the United States Trustee.

(8) Have submitted an application under oath, in the form prescribed by the Director, to the United States Trustee for the District in which appointment is sought: *Provided*, That this provision may be waived by the United States Trustee on approval of the Director.

§ 58.4 Qualification for appointment as standing trustee.

To be eligible for appointment as a standing trustee, an individual must have the qualifications for membership on a private panel of trustees set forth in § 58.3. An individual need not be an attorney to be eligible for appointment as a standing trustee. A corporation or partnership may be appointed as standing trustee only with the approval of the Director.

§ 58.5 Non-discrimination in appointment.

The United States Trustees shall not discriminate on the basis of race, color, religion, sex, national origin or age in appointments to the private panel of trustees or of standing trustees and in this regard shall assure equal opportunity for all appointees and applicants for appointment to the private panel of trustees or as standing trustee. Each United States Trustee shall be guided by the policies and requirements of Executive Order No. 11478 of August 8, 1969, relating to equal employment opportunity in the Federal Government, section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-16), section 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 633a), and the regulations of the Office of Personnel Management relating to equal employment opportunity (5 CFR Part 713).

[Order No. 921-80, 45 FR 82631, Dec. 16, 1980, as amended by Order No. 960-81, 46 FR 52360, Oct. 27, 1981]

PART 59—GUIDELINES ON METHODS OF OBTAINING DOCUMENTARY MATERIALS HELD BY THIRD PARTIES

Sec.

59.1 Introduction.
59.2 Definitions.
59.3 Applicability.
59.4 Procedures.

Sec.
59.5 Functions and authorities of the Deputy Assistant Attorneys General.
59.6 Sanctions.

AUTHORITY: Sec. 201, Pub. L. 96-440, 94 Stat. 1879 (42 U.S.C. 2000aa-11).

SOURCE: Order No. 942-81, 46 FR 22364, Apr. 17, 1981, unless otherwise noted.

§ 59.1 Introduction.

(a) A search for documentary materials necessarily involves intrusions into personal privacy. First, the privacy of a person's home or office may be breached. Second, the execution of such a search may require examination of private papers within the scope of the search warrant, but not themselves subject to seizure. In addition, where such a search involves intrusions into professional, confidential relationships, the privacy interests of other persons are also implicated.

(b) It is the responsibility of federal officers and employees to recognize the importance of these personal privacy interests, and to protect against unnecessary intrusions. Generally, when documentary materials are held by a disinterested third party, a subpoena, administrative summons, or governmental request will be an effective alternative to the use of a search warrant and will be considerably less intrusive. The purpose of the guidelines set forth in this part is to assure that federal officers and employees do not use search and seizure to obtain documentary materials in the possession of disinterested third parties unless reliance on alternative means would substantially jeopardize their availability (*e.g.*, by creating a risk of destruction, etc.) or usefulness (*e.g.*, by detrimentally delaying the investigation, destroying a chain of custody, etc.). Therefore, the guidelines in this part establish certain criteria and procedural requirements which must be met before a search warrant may be used to obtain documentary materials held by disinterested third parties. The guidelines in this part are not intended to inhibit the use of less intrusive means of obtaining documentary materials such as the use of a subpoena, summons, or formal or informal request.

§ 59.2 Definitions.

As used in this part—

(a) The term "attorney for the government" shall have the same meaning as is given that term in Rule 54(c) of the Federal Rules of Criminal Procedure;

(b) The term "disinterested third party" means a person or organization not reasonably believed to be—

(1) A suspect in the criminal offense to which the materials sought under these guidelines relate; or

(2) Related by blood or marriage to such a suspect;

(c) The term "documentary materials" means any materials upon which information is recorded, and includes, but is not limited to, written or printed materials, photographs, films or negatives, audio or video tapes, or materials upon which information is electronically or magnetically recorded, *but does not include* materials which constitute contraband, the fruits or instrumentalities of a crime, or things otherwise criminally possessed;

(d) The term "law enforcement officer" shall have the same meaning as the term "federal law enforcement officer" as defined in Rule 41(h) of the Federal Rules of Criminal Procedure; and

(e) The term "supervisory official of the Department of Justice" means the supervising attorney for the section, office, or branch within the Department of Justice which is responsible for the investigation or prosecution of the offense at issue, or any of his superiors.

§ 59.3 Applicability.

(a) The guidelines set forth in this part apply, pursuant to section 201 of the Privacy Protection Act of 1980 (Sec. 201, Pub. L. 96-440, 94 Stat. 1879, (42 U.S.C. 2000aa-11)), to the procedures used by any federal officer or employee, in connection with the investigation or prosecution of a criminal offense, to obtain documentary materials in the private possession of a disinterested third party.

(b) The guidelines set forth in this part do not apply to:

(1) Audits, examinations, or regulatory, compliance, or administrative in-

spections or searches pursuant to federal statute or the terms of a federal contract;

(2) The conduct of foreign intelligence or counterintelligence activities by a government authority pursuant to otherwise applicable law;

(3) The conduct, pursuant to otherwise applicable law, of searches and seizures at the borders of, or at international points of entry into, the United States in order to enforce the customs laws of the United States;

(4) Governmental access to documentary materials for which valid consent has been obtained; or

(5) Methods of obtaining documentary materials whose location is known but which have been abandoned or which cannot be obtained through subpoena or request because they are in the possession of a person whose identity is unknown and cannot with reasonable effort be ascertained.

(c) The use of search and seizure to obtain documentary materials which are believed to be possessed for the purpose of disseminating to the public a book, newspaper, broadcast, or other form of public communication is subject to Title I of the Privacy Protection Act of 1980 (Sec. 101, *et seq.*, Pub. L. 96-440, 94 Stat. 1879 (42 U.S.C. 2000aa, *et seq.*)), which strictly prohibits the use of search and seizure to obtain such materials except under specified circumstances.

(d) These guidelines are not intended to supersede any other statutory, regulatory, or policy limitations on access to, or the use or disclosure of particular types of documentary materials, including, but not limited to, the provisions of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401, *et seq.*), the Drug Abuse Office and Treatment Act of 1972, as amended (21 U.S.C. 1101, *et seq.*), and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended (42 U.S.C. 4541, *et seq.*).

§ 59.4 Procedures.[1]

(a) *Provisions governing the use of search warrants generally.* (1) A search warrant should not be used to obtain documentary materials believed to be in the private possession of a disinterested third party unless it appears that the use of a subpoena, summons, request, or other less intrusive alternative means of obtaining the materials would substantially jeopardize the availability or usefulness of the materials sought, and the application for the warrant has been authorized as provided in paragraph (a)(2) of this section.

(2) No federal officer or employee shall apply for a warrant to search for and seize documentary materials believed to be in the private possession of a disinterested third party unless the application for the warrant has been authorized by an attorney for the government. Provided, however, that in an emergency situation in which the immediacy of the need to seize the materials does not permit an opportunity to secure the authorization of an attorney for the government, the application may be authorized by a supervisory law enforcement officer in the applicant's department or agency, if the appropriate United States Attorney (or where the case is not being handled by a United States Attorney's Office, the appropriate supervisory official of the Department of Justice) is notified of the authorization and the basis for justifying such authorization under this part within 24 hours of the authorization.

(b) *Provisions governing the use of search warrants which may intrude upon professional, confidential relationships.* (1) A search warrant should not be used to obtain documentary materials believed to be in the private possession of a disinterested third party physician,[2] lawyer, or clergyman, under circumstances in which the materials sought, or other materials likely to be reviewed during the execution of the warrant, contain confidential information on patients, clients, or parishioners which was furnished or developed for the purposes of professional counseling or treatment, unless—

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[1] Notwithstanding the provisions of this section, any application for a warrant to search for evidence of a criminal tax offense under the jurisdiction of the Tax Division must be specifically approved in advance by the Tax Division pursuant to section 6-2.330 of the U.S. Attorneys' Manual.

[2] Documentary materials created or compiled by a physician, but retained by the physician as a matter of practice at a hospital or clinic shall be deemed to be in the private possession of the physician, unless the clinic or hospital is a suspect in the offense.

(i) It appears that the use of a subpoena, summons, request or other less intrusive alternative means of obtaining the materials would substantially jeopardize the availability or usefulness of the materials sought;

(ii) Access to the documentary materials appears to be of substantial importance to the investigation or prosecution for which they are sought; and

(iii) The application for the warrant has been approved as provided in paragraph (b)(2) of this section.

(2) No federal officer or employee shall apply for a warrant to search for and seize documentary materials believed to be in the private possession of a disinterested third party physician, lawyer, or clergyman under the circumstances described in paragraph (b)(1) of this section, unless, upon the recommendation of the United States Attorney (or where a case is not being handled by a United States Attorney's Office, upon the recommendation of the appropriate supervisory official of the Department of Justice), an appropriate Deputy Assistant Attorney General has authorized the application for the warrant. Provided, however, that in an emergency situation in which the immediacy of the need to seize the materials does not permit an opportunity to secure the authorization of a Deputy Assistant Attorney General, the application may be authorized by the United States Attorney (or where the case is not being handled by a United States Attorney's Office, by the appropriate supervisory official of the Department of Justice) if an appropriate Deputy Assistant Attorney General is notified of the authorization and the basis for justifying such authorization under this part within 72 hours of the authorization.

(3) Whenever possible, a request for authorization by an appropriate Deputy Assistant Attorney General of a search warrant application pursuant to paragraph (b)(2) of this section shall be made in writing and shall include:

(i) The application for the warrant; and

(ii) A brief description of the facts and circumstances advanced as the basis for recommending authorization of the application under this part.

If a request for authorization of the application is made orally or if, in an emergency situation, the application is authorized by the United States Attorney or a supervisory official of the Department of Justice as provided in paragraph (b)(2) of this section, a written record of the request including the materials specified in paragraphs (b)(3) (i) and (ii) of this section shall be transmitted to an appropriate Deputy Assistant Attorney General within 7 days. The Deputy Assistant Attorneys General shall keep a record of the disposition of all requests for authorizations of search warrant applications made under paragraph (b) of this section.

(4) A search warrant authorized under paragraph (b)(2) of this section shall be executed in such a manner as to minimize, to the greatest extent practicable, scrutiny of confidential materials.

(5) Although it is impossible to define the full range of additional doctor-like therapeutic relationships which involve the furnishing or development of private information, the United States Attorney (or where a case is not being handled by a United States Attorney's Office, the appropriate supervisory official of the Department of Justice) should determine whether a search for documentary materials held by other disinterested third party professionals involved in such relationships (*e.g.* psychologists or psychiatric social workers or nurses) would implicate the special privacy concerns which are addressed in paragraph (b) of this section. If the United States Attorney (or other supervisory official of the Department of Justice) determines that such a search would require review of extremely confidential information furnished or developed for the purposes of professional counseling or treat-

ment, the provisions of this subsection should be applied. Otherwise, at a minimum, the requirements of paragraph (a) of this section must be met.

(c) *Considerations bearing on choice of methods.* In determining whether, as an alternative to the use of a search warrant, the use of a subpoena or other less intrusive means of obtaining documentary materials would substantially jeopardize the availability or usefulness of the materials sought, the following factors, among others, should be considered:

(1) Whether it appears that the use of a subpoena or other alternative which gives advance notice of the government's interest in obtaining the materials would be likely to result in the destruction, alteration, concealment, or transfer of the materials sought; considerations, among others, bearing on this issue may include:

(i) Whether a suspect has access to the materials sought;

(ii) Whether there is a close relationship of friendship, loyalty, or sympathy between the possessor of the materials and a suspect;

(iii) Whether the possessor of the materials is under the domination or control of a suspect;

(iv) Whether the possessor of the materials has an interest in preventing the disclosure of the materials to the government;

(v) Whether the possessor's willingness to comply with a subpoena or request by the government would be likely to subject him to intimidation or threats of reprisal;

(vi) Whether the possessor of the materials has previously acted to obstruct a criminal investigation or judicial proceeding or refused to comply with or acted in defiance of court orders; or

(vii) Whether the possessor has expressed an intent to destroy, conceal, alter, or transfer the materials;

(2) The immediacy of the government's need to obtain the materials; considerations, among others, bearing on this issue may include:

(i) Whether the immediate seizure of the materials is necessary to prevent injury to persons or property;

(ii) Whether the prompt seizure of the materials is necessary to preserve their evidentiary value;

(iii) Whether delay in obtaining the materials would significantly jeopardize an ongoing investigation or prosecution; or

(iv) Whether a legally enforceable form of process, other than a search warrant, is reasonably available as a means of obtaining the materials.

The fact that the disinterested third party possessing the materials may have grounds to challenge a subpoena or other legal process is not in itself a legitimate basis for the use of a search warrant.

§ 59.5 Functions and authorities of the Deputy Assistant Attorneys General.

The functions and authorities of the Deputy Assistant Attorneys General set out in this part may at any time be exercised by an Assistant Attorney General, the Associate Attorney General, the Deputy Attorney General, or the Attorney General.

§ 59.6 Sanctions.

(a) Any federal officer or employee violating the guidelines set forth in this part shall be subject to appropriate disciplinary action by the agency or department by which he is employed.

(b) Pursuant to section 202 of the Privacy Protection Act of 1980 (Sec. 202, Pub. L. 96-440, 94 Stat. 1879 (42 U.S.C. 2000aa-12)), an issue relating to the compliance, or the failure to comply, with the guidelines set forth in this part may not be litigated, and a court may not entertain such an issue as the basis for the suppression or exclusion of evidence.

PART 60—AUTHORIZATION OF FEDERAL LAW ENFORCEMENT OFFICERS TO REQUEST THE ISSUANCE OF A SEARCH WARRANT

Sec.
60.1 Purpose.
60.2 Authorized categories.
60.3 Agencies with authorized personnel.

AUTHORITY: Rule 41(h), Fed. R. Crim. P.

SOURCE: Order No. 826-79, 44 FR 21785, Apr. 12, 1979, unless otherwise noted.

§ 60.1 Purpose.

This regulation authorizes certain categories of federal law enforcement officers to request the issuance of search warrants under Rule 41, Fed. R. Crim. P., and lists the agencies whose officers are so authorized. Rule 41(a) provides in part that a search warrant may be issued "upon the request of a federal law enforcement officer," and defines that term in Rule 41(h) as "any government agent, * * * who is engaged in the enforcement of the criminal laws and is within the category of officers authorized by the Attorney General to request the issuance of a search warrant." The publication of the categories and the listing of the agencies is intended to inform the courts of the personnel who are so authorized. It should be noted that only in the very rare and emergent case is the law enforcement officer permitted to seek a search warrant without the concurrence of the appropriate United States Attorney's office.

§ 60.2 Authorized categories.

The following categories of federal law enforcement officers are authorized to request the issuance of a search warrant:

(a) Any person authorized to execute search warrants by a statute of the United States.

(b) Any person who has been authorized to execute search warrants by the head of a department, bureau, or agency (or his delegate, if applicable) pursuant to any statute of the United States.

(c) Any peace officer or customs officer of the Virgin Islands, Guam, or the Canal Zone.

(d) Any officer of the Metropolitan Police Department, District of Columbia.

(e) Any person authorized to execute search warrants by the President of the United States.

(f) Any civilian agent of the Department of Defense not subject to military direction who is authorized by statute or other appropriate authority to enforce the criminal laws of the United States.

(g) Any civilian agent of the Department of Defense who is authorized to enforce the Uniform Code of Military Justice.

§ 60.3 Agencies with authorized personnel.

The following agencies have law enforcement officers within the categories listed in § 60.2 of this part:

(a) *National Law Enforcement Agencies:*

(1) Department of Agriculture:

National Forest Service

(2) Department of Defense:

Defense Investigative Service Criminal Investigation Command, United States Army

Naval Investigative Service, United States Navy

Office of Special Investigation, United States Air Force

(3) Department of Health and Human Services:

Center for Disease Control

Food and Drug Administration

Office of Investigations, Office of the Inspector General

(4) Department of the Interior:

Bureau of Indian Affairs

Bureau of Sport Fisheries and Wildlife

National Park Service

(5) Department of Justice:

Drug Enforcement Administration

Federal Bureau of Investigation

Immigration and Naturalization Service

U.S. Marshals Service

(6) Department of Transportation:

U.S. Coast Guard

(7) Department of the Treasury:

Bureau of Alcohol, Tobacco, and Firearms

Executive Protective Service

Internal Revenue Service

Criminal Investigation Division

Internal Security Division, Inspection Service

U.S. Customs Service

U.S. Secret Service

(8) U.S. Postal Service:

Inspection Service

(b) *Local Law Enforcement Agencies:*

(1) District of Columbia Metropolitan Police Department

(2) Law Enforcement Forces and Customs Agencies of Guam, The Virgin Islands, and the Canal Zone.

[Order No. 826-79, 44 FR 21785, Apr. 12, 1979, as amended by Order No. 844-79, 44 FR 46459, Aug. 8, 1979; Order No. 960-81, 46 FR 52360, Oct. 27, 1981]

PART 61—PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

Subpart A—General

Sec.
61.1 Background.
61.2 Purpose.
61.3 Applicability.
61.4 Major federal action.

Subpart B—Implementing Procedures

61.5 Typical classes of action.
61.6 Consideration of environmental documents in decisionmaking.
61.7 Legislative proposals.
61.8 Classified proposals.
61.9 Emergencies.
61.10 Ensuring Department NEPA compliance.
61.11 Environmental information.

Appendix A—Bureau of Prisons Procedures Relating to the Implementation of the National Environmental Policy Act
Appendix B—Drug Enforcement Administration Procedures Relating to the Implementation of the National Environmental Policy Act
Appendix C—Immigration and Naturalization Service Procedures Relating to the Implementation of the National Environmental Policy Act
Appendix D—Office of Justice Assistance, Research, and Statistics Procedures Relating to the Implementation of the National Environmental Policy Act

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301; Executive Order No. 11991.

Source: Order No. 927-81, 46 FR 7953, Jan. 26, 1981, unless otherwise noted.

Subpart A—General

§ 61.1 Background.

(a) The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, establishes national policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on proposals for legislation significantly affecting the quality of the human environment and on other major federal actions significantly affecting the quality of the human environment.

(b) Executive Order No. 11991 of May 24, 1977, directed the Council on Environmental Quality (CEQ) to issue regulations to implement the procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations, 40 CFR Parts 1500-1508, ("The NEPA regulations"). These regulations provide that each federal agency shall, as necessary, adopt implementing procedures to supplement the regulations. The NEPA regulations identify those sections of the regulations which must be addressed in agency procedures.

§ 61.2 Purpose.

The purpose of this part is to establish Department of Justice procedures which supplement the relevant provisions of the NEPA regulations and to provide for the implementation of those provisions identified in 40 CFR 1507.3(b).

§ 61.3 Applicability.

The procedures set forth in this part, with the exception of the appendices, apply to all organizational elements of the Department of Justice. Internal procedures applicable, respectively, to the Bureau of Prisons, the Drug Enforcement Administration, the Immigration and Naturalization Service, and the Office of Justice Assistance, Research and Statistics are set forth in the appendices to this part, for informational purposes.

§ 61.4 Major federal action.

The NEPA regulations define "major federal action." "Major federal action" does not include action taken by the Department of Justice within the framework of judicial or administrative enforcement proceedings or civil or criminal litigation, including but not limited to the submission of consent or settlement agreements and investigations. Neither does "major federal action" include the rendering of legal advice.

Subpart B—Implementing Procedures

§ 61.5 Typical classes of action.

(a) The NEPA regulations require agencies to establish three typical classes of action for similar treatment under NEPA. These classes are: actions normally requiring environmental impact statements (EIS), actions normally not requiring assessments or EIS, and actions normally requiring assessments but not necessarily EIS. Typical Department of Justice actions falling within each class have been identified as follows:

(1) *Actions normally requiring EIS.* None, except as noted in the appendices to this part.

(2) *Actions normally not requiring assessments or EIS.* Actions not significantly affecting the human environment.

(3) *Actions normally requiring assessments but not necessarily EIS.* (i) Proposals for major federal action; (ii) proposals for legislation developed by or with the significant cooperation and support of the Department of Justice and for which the Department has primary responsibility for the subject matter.

(b) The Department of Justice shall independently determine whether an EIS or an environmental assessment is required where:

(1) A proposal for agency action is not covered by one of the typical classes of action above; or

(2) For actions which are covered, the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

§ 61.6 Consideration of environmental documents in decisionmaking.

The NEPA regulations contain requirements to ensure adequate consideration of environmental documents in agency decisionmaking. To implement these requirements, the Department of Justice shall:

(a) Consider from the earliest possible point in the process all relevant environmental documents in evaluating proposals for Department action;

(b) Ensure that all relevant environmental documents, comments and responses accompany the proposal through existing Department review processes;

(c) Consider those alternatives encompassed by the range of alternatives discussed when evaluating proposals for Department action, or if it is desirable to consider substantially different alternatives, first supplement the environmental document to include analysis of the additional alternatives;

(d) Where an EIS has been prepared, consider the specific alternatives analyzed in the EIS when evaluating the proposal which is the subject of the EIS.

§ 61.7 Legislative proposals.

(a) Each subunit of the Department of Justice which develops or significantly cooperates and supports a bill or legislative proposal to Congress which may have an effect on the environment shall, in the early stages of development of the bill or proposal, undertake an assessment to determine whether the legislation will significantly affect the environment. The Office of Legislative Affairs shall monitor legislative proposals to assure that Department procedures for legislation are complied with. Requests for appropriations need not be so analyzed.

(b) If the Department of Justice has primary responsibility for the subject matter involved and if the subunit affected finds that the bill or legislative proposal has a significant impact on the environment, that subunit shall prepare a legislative environmental impact statement in compliance with 40 CFR 1506.8.

§ 61.8 Classified proposals.

If an environmental document includes classified matter, a version containing only unclassified material shall be prepared unless the head of the office, board, bureau or division determines that preparation of an unclassified version is not feasible.

§ 61.9 Emergencies.

CEQ shall be consulted when emergency circumstances make it necessary to take a major federal action with significant environmental impact without following otherwise applicable procedural requirements under NEPA.

§ 61.10 Ensuring Department NEPA compliance.

The Land and Natural Resources Division shall have final responsibility for ensuring compliance with the requirements of the procedures set forth in this part.

§ 61.11 Environmental information.

Interested persons may contact the Land and Natural Resources Division for information regarding Department Justice compliance with NEPA.

APPENDIX A—BUREAU OF PRISONS.—PROCEDURES RELATING TO THE IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

1. *Authority: (CEQ Regulations)* NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.) Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977.)

2. Purpose: This guide shall apply to efforts associated with the leasing, purchase, design, construction, management, operation and maintenance of new and existing Bureau of Prisons facilities as well as the closing of existing Bureau of Prisons institutions. These procedures shall be used by the Regional Facilities Administration staff as well as the Central Office of Facilities Development and Operations staff. Activities concerning Bureau of Prisons compliance with NEPA shall be handled by and coordinated with these staff members and coordinated by Central Office Personnel. (Reference shall be made to Part 1507—Agency Compliance of the CEQ Regulations.)

3. Agency Description: The Bureau of Prisons, a component of the U.S. Department of Justice, is responsible for providing custody and care to committed Federal offenders in an integrated system of correctional institutions across the nation.

The Bureau of Prisons performs its mission of protecting society by implementing the judgments of the Federal courts and safeguarding Federal offenders committed to the custody of the Attorney General.

The administration of the Federal Prison System consists of six divisions. The central office in Washington, D.C., is supplemented by five regional offices located in Atlanta, San Francisco, Dallas, Kansas City, and Philadelphia.

4. *(Reference: § 1501.2(d)(1)—CEQ Regulations)* The Bureau of Prisons shall make available the necessary technical staff to review proposals and prepare feasibility studies for facilities under consideration for possible use as Federal correctional institutions. *(Reference: § 1501.2(d)(2)—CEQ Regulations)* At the appropriate time after project funding approval, the Bureau of Prisons, having identified a preferred general area for a new facility, will inform the members of Congress representing the affected locale of the intent to pursue the establishment of a Federal correctional institution in the area. This activation might include but not be limited to: (1) The construction of a new facility; (2) or Surplus Federal, state, or local facility to the Bureau of Prisons for prior use. The Bureau of Prisons shall advise and inform interested parties concerning proposed plans which might result in implementation of the NEPA regulations. After inital informal contacts have been made, the Bureau of Prisons will with the aid of local area officials, begin to identify desired locations for the proposed new facility. In the event of proposed activation of an existing facility for prison use, the Bureau of Prisons shall seek initial involvement among local officials and advice on alternative courses of action.

In either case, if the issues appear significantly controversial, an informal public hearing will be held to present the issues to the community and seek their involvement in the planning process. Upon completion of the preliminary groundwork described above, the Bureau of Prisons will issue an A-95 letter of intent to (1) either file an EIS; (2) file an EIA; or (3) discontinue the efforts of locating a facility in the proposed area.

5. *Public Involvement: (Reference: Part 1506.6(3)—CEQ Regulations)* Information regarding the policies of the Bureau of Prisons for implementing the NEPA process can be obtained from: Bureau of Prisons Facilities Development and Operations Office, 320 First Street, NW., Washington, D.C. 20534.

6. *Supplemental Statements: (Reference: Part 1502.9(c)(3)—CEQ Regulations)* If it is necessary to prepare a supplement to a Draft or Final Environmental Impact Statement, the supplement shall be introduced into the project administrative record.

7. *Bureau of Prisons Decisionmaking Procedures: (Reference: Part 1501.1 (a) through (e)—CEQ Regulations)* Major decision points likely to involve the NEPA process:

(1) Construction of a new Federal correctional institution.

(2) Closing of an existing Federal correctional institution.

(3) Activation of a surplus facility for conversion to a Federal correctional institution.

(4) Significant change from the original mission of a Federal correctional institution.

(5) New construction at an existing Federal correctional institution which might significantly impact upon the existing community environment.

When the inclusion of certain voluminous data in environmental documents would prove impractical, the Bureau of Prisons will summarize the data and retain the original material as a part of its administrative record for the project. This material will be made available to the public in a central place to be designated in Environmental Impact Statements, and upon written request or court order copies of specified material will be provided. A charge may be made for copying, in accordance with current Department of Justice gudelines for reproduction of records.

Decisionmakers shall verify the consideration of all available options in the EIS with a comparative analysis of the alternatives to be considered in the decisionmaking process.

8. Those Actions Which Normally Do Require Environmental Impact Statements: (*Reference: § 1507.3(b)(2)(ii)—CEQ Regulations* (1) New Federal correctional institution construction projects.

(2) Acquisition of surplus facilities for conversion to Federal correctional institutions, if the impact upon the quality of the human environment is likely to be significant.

(3) The closing of an existing Federal correctional institution, if that is likely to have a significant impact upon the quality of the human environment.

(4) Significant change from the original mission of a Federal correctional institution when the issue is likely to have an impact upon the quality of the human environment.

(5) New construction at an existing Federal correctional institution which would significantly affect the physical capacity, when the action is likely to have an impact upon the quality of the human environment.

(6) New construction at an existing Federal correctional institution which would significantly impact upon the quality of the community environment.

9. Those Actions Which Normally do not Require Either an Environmental Impact Statement or an Environmental Assessment: (*Reference: Part 1507.3(b)(2)(ii) and Part 1508.4—CEQ Regulations*) (1) Increase or decrease in population of a facility, above or below its physical capacity.

(2) Construction projects for existing facilities, including but not limited to: additions and remodeling; replacement of building systems and components; maintenance and operations, repairs, and general improvements; when such projects do not significantly alter the program of the facility or significantly impact upon the quality of the environment in the community.

10. Those Actions Which Normally Require Environmental Assessments but not Necessarily Environmental Impact Statements: (*Reference: § 1507.3(b)(2)(iii)—CEQ Regulations*) (1) Acquisition of surplus facilities for conversion to Federal correctional institution.

(2) Construction of additional facilities at an existing institution when the impact on the local environment is not seen to be significant, but when the alteration of programs or operations may be controversial.

(3) The closing of an institution or significant reduction in population of an institution when the impact on the local environment is not seen to be significant.

11. *Emergency Actions: (Reference: Part 1506.11—CEQ Regulations).* After consultation with the Council on Environmental Quality regarding alternative courses of action, the Bureau of Prisons may take action without observing the provisions of the CEQ Regulations and these Bureau of Prisons Procedures in the following cases:

(1) When the replacement of suddenly unavailable local utilities services, and/or resources, due to circumstances beyond the control of the Bureau of Prisons, is vital to the lives and safety of inmates and staff or protection of U.S. Government property.

(2) When unforeseen circumstances, such as greatly increased judicial commitments, suddenly dictate the activation of facilities to house increased numbers of Federal offenders and detainees significantly above the physical capacity of the combined Bureau of Prisons facilities in order to insure the lives and safety of inmates and staff or protection of U.S. Government property.

(3) When the sudden destruction of or damage to institutions dictates immediate replacement in order to protect the lives and safety of inmates and staff and protection of U.S. Government property.

APPENDIX B—DRUG ENFORCEMENT ADMINISTRATION PROCEDURES RELATING TO THE IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

1. Applicability.
2. Typical Classes of Action Requiring Similar Treatment Under NEPA.
3. Environmental Information.

1. *Applicability.*

This part applies to all organizational elements of the Drug Enforcement Administration [DEA].

2. *Typical Classes of Action Requiring Similar Treatment Under NEPA.*

(a) Section 1507.3(c)(2) in conjunction with § 1508.4 requires agencies to establish three typical classes of action for similar treatment under NEPA. These typical classes of action are set forth below:

(1) Actions normally requiring EIS	(2) Actions normally not requiring environmental assessments or EIS (Categorical exclusions)	(3) Actions normally requiring environmental assessments but not necessarily EIS
None	Scheduling of drugs as controlled substances	Chemical eradication of plant species from which controlled substances may be extracted.
	Establishing quotas for controlled substances	
	Registration of persons authorized to handle controlled substances.	
	Storage and destruction of controlled substances	
	Manual eradication of plant species from which controlled substances may be extracted.	

(b) For the principal DEA program requiring environmental review, the following chart identifies the point at which the NEPA process begins, the point at which it ends, and the key agency officials or offices required to consider environmental documents in their decisionmaking.

Principal program	Start of NEPA process	Completion of NEPA process	Key officials or offices required to consider environmental documents
Eradication of plant species from which controlled substances may be extracted.	Prepare an environmental assessment.	Final review of environmental assessment or Environmental Impact Statement.	Office of Science and Technology.

(c) The DEA shall independently determine whether an EIS or an environmental assessment is required where:

(1) A proposal for agency action is not covered by one of the typical classes of action in (a) above; or

(2) For actions which are covered, the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

3. *Environmental Information*

Interested persons may contact the Office of Science and Technology for information regarding the DEA compliance with NEPA.

APPENDIX C—IMMIGRATION AND NATURALIZATION SERVICE PROCEDURES RELATING TO THE IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

1. *General.* These procedures are published pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.). Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

2. *Purpose.* These procedures shall apply to efforts associated with the leasing, purchase, design, construction, and maintenance of new and existing INS facilities. All activities concerning the Immigration and Naturalization Service's compliance with NEPA shall be coordinated with Central Office Engineering staff.

3. *Agency Description.* The INS administers and enforces the immigration and nationally laws. This includes determining the admissibility of persons seeking entry into the United States and adjudicating requests for benefits and privileges under the immigration and nationality laws. The enforcement actions of INS involve the prevention of illegal entry of persons into the United States and the investigation and apprehension of aliens already in the country who because of inadmissibility at entry or misconduct committed following entry may be subject to deportation.

In carrying out its statutory enforcement responsibilities, the INS is authorized to arrest and detain aliens believed to be deportable and to effectuate removal from the U.S. of aliens found deportable after hearing.

4. *Designation of Responsible Official.* The Chief Engineer, Facilities and Engineering Branch shall be the liasion official for INS with the Council on Environmental Quality, the Environmental Protection Agency, and the other departments and

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agencies concerning environmental matters. Duties of the Chief Engineer include:

(a) Insuring compliance with the requirements of NEPA and that the actions with respect to the fulfillment of NEPA are coordinated;

(b) Providing for procedural and substantive training on environmental issues, policy, procedures and clearance requirements;

(c) Providing guidance in the preparation and processing of Environmental Impact Statements; and

(d) Participating in policy formulation, as necessary, in the application of the requirements of the National Environmental Policy Act of 1969.

5. *NEPA and INS Planning.* (a) INS will make available to the public proposals and feasibility studies for facilities under consideration for possible use as INS facilities.

(b) Interested parties indentified as such by the local clearinghouse (as established by the Office of Management and Budget Circular No. A-95) will be advised and informed concerning proposed plans which might involve NEPA regulations.

(c) Upon completion of the preliminary groundwork described above, INS will issue an A-95 Letter of Intent to:

(1) File an Environmental Impact Assessment (EIA);

(2) File an Environmental Impact Statement (EIS). (Reference: 1501.2—CEQ Regulations.)

6. *Public Involvement.* Information regarding the policies of INS for implementing the NEPA process can be obtained from: Immigration and Naturalization Service, Facilities and Engineering Branch, 425 I Street NW., Washington, D.C. 20536. (Reference: Part 1506.6(3)—CEQ Regulations.)

7. *Supplemental Statements.* If it is necessary to prepare a supplement to a draft or a Final Environmental Impact Statement, the supplement shall be introduced into the administrative record pertaining to the project. (Reference: Part 1502.9(c)(3)—CEQ Regulations.)

8. *INS Decisionmaking Procedure.* (a) *Policy*—(1) the Chief Engineer will consider all practical means, including the "no-action" alternative and other alternatives to the proposed action, which will enhance, protect, and preserve the quality of the environment, restore environmental quality previously lost, and minimize and mitigate unavoidable adverse effects. He will analyze and study the environment together with engineering, economic, social and other considerations to insure balanced decisionmaking in the overall public interest.

(2) During INS project planning and the related decisonmaking process, environmental effects will be weighed together with the engineering, economic and social and other considerations affecting the public interest.

(b) *Preparation of the environmental impact statements.* (1) Situations where Environmental Impact Statements (EIS) are required are described in section 102(2)(C) of NEPA. EIS constitute an integral of the plan formulation process and serve as a summation and evaluation of the effects, both beneficial and adverse, that each alternative action would have on the environment, and as an explanation and objective evaluation of the plan which is finally recommended.

(2) Should the Chief Engineer determine in assessing the impact of a minor action that an environmental statement is not required, the determination to that effect will be placed in the project file. This negative determination shall be made available to the public as required in § 1506.6 of the CEQ regulations and shall include a statement of the facts and the basis for the decision.

(3) When inclusion of certain voluminous data in an EIS would prove to be impractical, INS will summarize the data and retain the original material as a part of its administrative record for the project. This material will be made available to the public in a central place to be designated in the EIS, and upon written request or court order, copies of specified material will be provided. A charge for the reproduction of records may be made in accordance with current Department of Justice guidelines. (Reference: Part 1505 CEQ Regulations.)

9. *Actions Which Normally Do Require Environmental Impact Statements:* (a) Construction of a new INS facility which would have a significant impact upon the environment.

(b) Construction of a new addition to an existing INS facility which would significantly affect the physical capacity and which would have a significant impact upon the environment. (Reference: § 1507.3(b)(2)(i)—CEQ Regulations.)

10. *Actions Which Normally Do Not Require Either An Environmental Impact Statement Or An Environmental Assessment:* (a) Construction projects for existing facilities including but not limited to: Remodeling; replacement of building systems and components; maintenance and operations repairs and general improvements when such projects do not significantly alter the intitial occupancy and program of the facility or significantly impact upon the environment.

(b) Increase or decrease in population of a facility within its physical capacity. (Reference: Part 1507.3(b)(2)(ii) and Part 1508.4—CEQ Regulations.)

11. *Actions Which Normally Require An Environmental Assessment But Not Necessarily Environmental Impact Statements:*

(a) Construction of a new addition to an existing INS facility which may affect the physical capacity and may have some impact upon the environment.

(b) Closing of an INS facility which may have some impact on the environment. (Reference: § 1507.3(b)(2)(iii)—CEQ Regulations.)

APPENDIX D—OFFICE OF JUSTICE ASSISTANCE, RESEARCH, AND STATISTICS PROCEDURES RELATING TO THE IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

1. AUTHORITY

These procedures are issued pursuant to the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321, *et seq.*, Regulations of the Council on Environmental Quality, 40 CFR Part 1500, *et seq.*, the Environmental Quality Improvement Act of 1970, as amended, 42 U.S.C. 4371, *et seq.*, Section 309 of the Clean Air Act, as amended, 42 U.S.C. 7609, and Executive Order 11514, "Protection and Enhancement of Environmental Quality," March 5, 1970, as amended by Executive Order 11991, March 24, 1977.

2. PURPOSE

It is the purpose of these procedures to supplement the procedures of the Department of Justice so as to insure compliance with NEPA. These procedures supersede the regulations contained in 28 CFR Part 19.

3. AGENCY DESCRIPTION

The Office of Justice Assistance, Research, and Statistics (OJARS) assists State and local units of government in strengthening and improving law enforcement and criminal justice by providing financial assistance and funding research and statistical programs. OJARS will coordinate the activities and provide the staff support for three Department of Justice Federal financial assistance offices: the Law Enforcement Assistance Administration, the National Institute of Justice, and the Bureau of Justice Statistics. Each of the assistance offices has the authority to award grants, contracts and cooperative agreements pursuant to the Justice System Improvement Act of 1979, Pub. L. 96-157 (December 27, 1979).

4. TYPICAL CLASSES OF ACTION UNDERTAKEN

(a) Actions which normally require an environmental impact statement.

(1) None.

(b) Actions which normally do not require either an environmental impact statement or an environmental assessment.

(1) The bulk of the funded efforts; training programs, court improvement projects, research, and gathering statistical data.

(2) Minor renovation projects or remodeling.

(c) Actions which normally require environmental assessments but not necessarily environmental impact statements.

(1) Renovations which change the basic prior use of a facility or significantly change the size.

(2) New construction.

(3) Research and technology whose anticipated and future application could be expected to have an effect on the environment.

(4) Implementation of programs involving the use of chemicals.

(5) Other actions in which it is determined by the Administrator, Law Enforcement Assistance Administration; the Director, Bureau of Justice Statistics; or the Director, National Institute of Justice, to be necessary and appropriate.

5. AGENCY PROCEDURES

An environmental coordinator shall be designated in the Bureau of Justice Statistics, the Law Enforcement Assistance Administration, and in the National Institute of Justice. Duties of the environmental coordinator shall include:

(a) Insuring that adequate environmental assessments are prepared at the earliest possible time by applicants on all programs or projects that may have a significant impact on the environment. The assessments shall contain documentation from independent parties with expertise in the particular environmental matter when deemed appropriate. The coordinator shall return assessments that are found to be inadequate.

(b) Reviewing the environmental assessments and determining whether an Environmental Impact Statement is required or preparing a "Finding of No Significant Impact."

(c) Coordinating the efforts for the preparation of an Environmental Impact Statement consistent with the requirements of 40 CFR Part 1502.

(d) Cooperating and coordinating efforts with other Federal agencies.

(e) Providing for agency training on environmental matters.

6. COMPLIANCE WITH OTHER ENVIRONMENTAL STATUTES

To the extent possible an environmental assessment, as well as an environmental impact statement, shall include information necessary to assure compliance with the following:

Fish and Wildlife Coordination Act, 16 U.S.C. 661, *et seq.;* the National Historic

Preservation Act of 1966, 16 U.S.C. 470, *et seq.;* Flood Disaster Protection Act of 1973, 42 U.S.C. 400, *et seq.;* Clean Air Act and Federal Water Pollution Control Act, 42 U.S.C. 1857, *et seq.;* 33 U.S.C. 1251, *et seq.;* Safe Drinking Water Act, 42 U.S.C. 300, *et seq.;* Wild and Scenic Rivers Act, 16 U.S.C. 1271, *et seq.;* the Coastal Zone Management Act of 1972, 16 U.S.C. 1451, *et seq.;* and other environmental review laws and executive orders.

7. ACTIONS PLANNED BY PRIVATE APPLICANTS OR OTHER NON-FEDERAL ENTITIES

Where actions are planned by private applicants or other non-Federal entities before Federal involvement:

(a) The Policy and Management Planning Staff, Office of Criminal Justice Programs, LEAA, Room 1158B, 633 Indiana Ave., Washington, D.C. 20531, Telephone: 202/724-7659, will be available to advise potential applicants of studies or other information foreseeably required for later Federal action;

(b) OJARS will consult early with appropriate State and local agencies and with interested private persons and organizations when its own involvement is reasonably foreseeable;

(c) OJARS will commence its NEPA process at the earliest possible time (Ref. § 1501.2(d) CEQ Regulations).

8. SUPPLEMENTING AN EIS

If it is necessary to prepare a supplement to a draft or a final EIS, the supplement shall be introduced into the administrative record pertaining to the project. (Ref. § 1502.9(c)(3) CEQ Regulations).

9. AVAILABILITY OF INFORMATION

Information regarding status reports on EIS's and other elements of the NEPA process and policies of the agencies can be obtained from: Policy and Management Planning Staff, Office of Criminal Justice Programs, LEAA, Room 1158B, 633 Indiana Avenue, Washington, D.C. 20531, Telephone: 202/724-7659.

PART 63—FLOODPLAIN MANAGEMENT AND WETLAND PROTECTION PROCEDURES

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AUTHORITY: 5 U.S.C. 301, Executive Order No. 11988 of May 24, 1977 and Executive Order No. 11990 of May 24, 1977.

SOURCE: Order No. 902-80, 45 FR 50565, July 30, 1980, unless otherwise noted.

§ 63.1 Purpose.

These guidelines set forth procedures to be followed by the Department of Justice to implement Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands). (The Orders.)

§ 63.2 Policy.

(a) It is the Department of Justice's policy to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and floodplains and to avoid direct or indirect support of new construction in floodplains and wetlands whenever there is a practicable alternative. The Department will provide leadership and take affirmative action to carry out the Orders.

(b) It is the Department of Justice's intention to integrate these procedures with those required under statutes protecting the environment, such as the National Environmental Policy Act (NEPA). Whenever possible, the procedures detailed herein should be coordinated with other required documents, such as the environmental impact statement (EIS) or environmental assessment required under NEPA, so that unnecessary paperwork can be eliminated.

§ 63.3 References.

(a) Unified National Program for Floodplain Management, Water Resources Council, which is incorporated in these guidelines.

(b) Water Resources Council Floodplain Management Guidelines, Water Resources Council, 1978 (43 FR 6030).

(c) National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 *et seq.*) and NFIP criteria (44 CFR Part 59 *et seq.*).

(d) Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat. 975).

(e) National Environmental Policy Act of 1969, as amended (43 U.S.C. 4321 *et seq.*) (NEPA).

§ 63.4 Definitions.

Throughout this part, the following basic definitions shall apply:

(a) *Action*—any Federal activity including: (1) Acquiring, managing and disposing of Federal lands and facilities; (2) providing federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and program affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

(b) *Agency*—an executive department, a government corporation, or an independent establishment and includes the military departments.

(c) *Base Flood*—that flood which has a one percent chance of occurrence in any given year (also known as a *100-year flood*). (This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.)

(d) *Base Floodplain*—the 100-year floodplain (one percent chance floodplain). Also see definition of floodplain.

(e) *Channel*—a natural or artificial watercourse of perceptible extent, with a definite bed and banks to confine and conduct continuously or periodically flowing water.

(f) *Critical Action*—any activity for which even a slight chance of flooding would be too great.

(g) *Facility*—any man-made or man-placed item other than a structure.

(h) *Flood or Flooding*—a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the usual and rapid accumulation or runoff of surface waters from any source.

(i) *Flood Fringe*—that portion of the floodplain outside of the regulatory floodway (often referred to as "floodway fringe").

(j) *Floodplain*—the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical action floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).

(k) *Floodproofing*—the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out or to reduce effects of water entry.

(l) *Minimize*—to reduce to the smallest possible amount or degree.

(m) *One Percent Chance Flood*—the flood having one chance in 100 of being exceeded in any one-year period (a large flood). The likelihood of exceeding this magnitude increases in a time period longer than one year. For example, there are two chances in three of a larger flood exceeding the one percent chance flood in a 100-year period.

(n) *Practicable*—capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors, such as environment, cost or technology.

(o) *Preserve*—to prevent modification to the natural floodplain environment or to maintain it as closely as possible to its natural state.

(p) *Regulatory Floodway*—the area regulated by Federal, State or local requirements; the channel of a river or other watercourse and the adjacent land areas that must be reserved in an open manner, i.e., unconfined or unobstructed either horizontally or vertically, to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the NFIP).

(q) *Restore*—to re-establish a setting or environment in which the natural functions of the floodplain can again operate.

(r) *Structures*—walled or roofed buildings, including mobile homes and gas or liquid storage tanks that are primarily above ground (as set by the NFIP).

(s) *Wetlands*—"those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds" (as defined in Executive Order 11990 (Protection of Wetlands)).

§ 63.5 Responsibilities.

(a) The Assistant Attorney General, Land and Natural Resources Division,

(1) Has overall responsibility for ensuring that the Department's responsibilities for complying with the Orders are carried out,

(2) Will ensure that the Water Resources Council, the Council on Environmental Quality, and the Federal Insurance Agency (FIA) are kept informed of the Department's execution of the Orders, as necessary, and

(3) Will determine, and revise on a continuing basis, which components of the Department should take further steps, such as the promulgation of program specific procedures, to comply with the Orders. Considerations for making this selection are whether a component:

(i) Acquires, manages, and disposes of federal lands and facilities;

(ii) Provides federally undertaken, financed or assisted construction and improvements;

(iii) Conducts federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities;

(iv) Reviews and approves component procedures for complying with the Orders;

(b) The heads of offices, boards, bureaus and divisions,

(1) Are responsible for preparing program specific guidelines or procedures, where necessary, to comply with the Orders and for updating these procedures, as required,

(2) Will maintain general supervision over any new construction planning within the office, board, bureau, or division to see that the policy considerations and procedural requirements contained herein are followed in the planning process,

(3) Will furnish, with all requests for new authorizations or appropriations for proposals to be located in floodplains or wetlands, a statement that the proposal is in accord with the Orders,

(4) Will provide information to applicants for licenses, permits, loans or grants in areas in which floodplain and wetland requirements may have to be met,

(5) Will provide conspicuous notice of past flood damage and potential flood hazard on structures under the component's control and used by the general public, and

(6) If responsible for granting a lease, an easement, or right-of-way, or for disposing of federal property in a floodplain or wetland to nonfederal public or private parties, will, unless otherwise directed by law.

(i) Reference uses in the conveyance that are restricted under identified Federal, State or local floodplain regulations; and

(ii) Attach other appropriate restrictions; or

(iii) Refuse to convey.

§ 63.6 Procedures.

Prior to taking any action, as defined in § 63.4(a) of this part, an office, board, bureau or division shall:

(a) Determine whether the proposed action is located in a wetland and/or the 100-year floodplain (or the 500-year floodplain for critical actions) and determine whether the proposed action has the potential to affect or be affected by a floodplain or wetland. The determination concerning location in a floodplain or wetland shall be performed in accordance with § 63.7 of this part. For actions which are in both a floodplain and wetland, the wetland should be considered as one of the natural and beneficial values of the floodplain.

(b) Notify the public at the earliest possible time of the intent to carry out the action affecting or affected by a floodplain or wetland, and involve the broadest affected and interested public in the decisionmaking process. At a minimum, all notices shall be published in the newspaper serving the project area that has the widest circulation and shall be distributed through the A-95 review process if subject to that process. In addition, notices of actions shall be published in the Federal Register, if so required by the Assistant Attorney General, Land and Natural Resources Division, or by law. For certain actions, notice may entail other audiences and means of distribution. All actions shall be reviewed according to the following criteria to determine the appropriate audience for and means of notification beyond those required above: Scale of action, potential for controversy, degree of public need for the action, number of affected persons, and anticipated potential impacts. Each notice shall include the following: A statement of the purpose of and a description of the proposed action, a map of the general area clearly delineating the action's locale and its relationship to its environs, a statement that it has been determined to be located in or that it affects a floodplain or wetland, a statement of intent to avoid the floodplain or wetland where practicable, and to mitigate impacts where avoidance cannot be achieved, and identification of the responsible official for receipt of comments and for further information.

(c) Identify and evaluate practicable alternatives to locating in a floodplain or wetland (including alternative sites outside the floodplain or wetland; alternative actions which serve essentially the same purpose as the proposed action, but which have less potential to adversely affect the floodplain or wetland; and the "no action" option). The following factors shall be analyzed in determining the practicability of alternatives: Natural environment (topography, habitat, hazards, etc.); social concerns (aesthetics, historical and cultural values, land use patterns, etc.); economic aspects (costs of space, construction, services, and relocation); and legal constraints (deeds, leases, etc.). The component shall not locate the proposed action in the base floodplain (500-year floodplain for critical actions) or in a wetland if a practicable alternative exists outside the base floodplain (500-year floodplain for critical actions) or wetland.

(d) Identify the full range of potential direct or indirect adverse impacts associated with the occupancy and modification of floodplains and wetlands and the direct and indirect support of floodplain and wetland development that could result from the proposed action. Flood hazard-related factors shall be analyzed for all actions. These include, for example, the following: Depth, velocity and rate of rise of flood water; duration of flooding, high hazard areas (riverine and coastal); available warning and evacuation time and routes; effects of special problems, e.g., levees and other protection works, erosion, subsidence, sink holes, ice jams, combinations of flood sources, etc. Natural values-related factors, shall be analyzed for all actions. These include, for example, the following: water resource values (natural moderation of floods, water quality maintenance, and ground water recharge); living resource values (fish and wildlife and biological productivity); cultural resource values (archeological and historic sites, and open space for recreation and green belts); and agricultural, aquacultural and forestry resource values. Factors relevant to a proposed action's effects on the survival and quality of wetlands, shall be analyzed for all actions. These include, for example, the following: Public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards, sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

(e) Where avoidance of floodplains or wetlands cannot be achieved, design or modify its actions so as to minimize harm to or within the floodplain, minimize the destruction, loss or degradation of wetlands, restore and preserve natural and beneficial floodplain values, and preserve and enhance natural and beneficial wetland values.

The component shall minimize potential harm to lives and property from the 100-year flood (500-year flood for critical actions), minimize potential adverse impacts the action may have on others, and minimize potential adverse impacts the action may have on floodplain and wetland values, Minimization of harm to property shall be performed in accord with the standards and criteria set out at 44 CFR Part 59 *et seq.*, (formerly 24 CFR Part 1901 *et seq.*), substituting the 500-year standard for critical actions and, where practicable, elevating structures on open works—walls, columns, piers, piles, etc.—rather than on fill. Minimization of harm to lives shall include, but not be limited to, the provision for warning and evacuation procedures for all projects and shall emphasize adequacy of warning time and access and egress routes.

(f) Re-evaluate the proposed action to determine, first, if it is still practicable in light of its exposure to flood hazards and its potential to disrupt floodplain and wetland values and, second, if alternatives rejected at § 63.6(c) of this part are practicable, in light of the information gained in § 63.6(d) and § 63.6(e) of this part. Unless required by law, the proposed action shall not be located in a floodplain or wetland unless the importance of the floodplain or wetland site clearly outweighs the requirements of E.O. 11988 and E.O. 11990 to avoid direct or indirect support of floodplain and wetland development; reduce the risk of flood loss; minimize the impact of floods on human safety, health and welfare; restore and preserve floodplain values; and minimize the destruction, loss or degradation of wetlands. In addition, where there are no practicable alternative sites and actions, and where the potential adverse effects of using the floodplain or wetland site cannot be minimized, no action shall be taken, unless required by law.

(g) Prepare, and circulate a finding and public explanation of any final decision that there is no practicable alternative to locating an action in, or affecting a floodplain or wetland. The same audience and means of distribution used in paragraph (b) of this section, shall be used to circulate this finding. The finding shall include the following: the reasons why the action is proposed to be located in a floodplain or wetland, a statement indicating whether the action conforms to applicable State or local floodplain management standards, a list of alternatives considered, and a map of the general area clearly delineating the project locale and its relationship to its environs. A brief comment period on the finding shall be provided whenever practicable prior to taking any action.

(h) Review the implementation and post implementation phase of the proposed action to ensure that the provisions of paragraph (e) of this section, are fully implemented. This responsibility shall be fully integrated into existing review, audit, field oversight and other monitoring processes, and additional procedures shall be prepared where existing procedures may be inadequate to ensure that the Orders' goals are met.

§ 63.7 Determination of location.

(a) In order to determine whether an action is located on or affects a *floodplain*, the component shall:

(1) Consult the FIA Flood Insurance Rate Map (FIRM) and the Flood Insurance Study (FIS); or

(2) If a detailed map (FIRM) is not available, consult an FIA Flood Hazard Boundary Map (FHBM); or

(3) If data on flood elevations, floodways, or coastal high hazard areas are needed, or if none of the maps delineates the flood hazard boundaries in the vicinity of the proposed site, seek detailed information and assistance as necessary and appropriate from the Department of Agriculture's Soil Conservation Service, the Army Corps of Engineers, the National Oceanic and Atmospheric Administration, the Federal Emergency Management Agency's Regional Offices/Division of Insurance and Hazard Mitigation, the Department of the Interior's Geological Survey, Bureau of Land Management, and Bureau of Reclamation, the Tennessee Valley Authority, the Delaware River Basin Commission, the Susquehanna River Basin Commission, indi-

vidual states and/or land administering agencies; or

(4) If the sources listed above do not have or know of the information necessary to comply with the Orders' requirements, seek, as permitted by law, the services of a federal or other engineer experienced in this work to

(i) Locate the site and the limits of the coastal high hazard area, floodway and of the applicable floodplain, and

(ii) Determine base flood elevations.

(b) In the absense of a finding to the contrary, the component shall assume that action involving a facility or structure that has been flooded in a major disaster or emergency is in the applicable floodplain for the site of the proposed action.

(c) In order to determine whether an action is located on or affects a *wetland*, the component shall:

(1) Consult with the United States Fish and Wildlife Service (FWS) for information concerning the location, scale and type of wetlands within the area which could be affected by the proposed action; or

(2) If the FWS does not have adequate information upon which to base the determination, consult wetland inventories maintained by the Army Corps of Engineers, the Environmental Protection Agency, various states, communities and others; or

(3) If state or other sources do not have adequate information upon which to base the determination, insure that an on-site analysis is performed by a representative of the FWS or other qualified individual for wetlands characteristics based on the performance definition of what constitutes a wetland.

§ 63.8 Implementation.

Agencies and divisions within the Department of Justice shall amend existing regulations and procedures, as appropriate, to incorporate the policy and procedures set forth in these guidelines. Such amendments will be made within 6 months of final publication of these guidelines.

§ 63.9 Exception.

Nothing in these guidelines shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety performed pursuant to sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

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CHAPTER III—FEDERAL PRISON INDUSTRIES, DEPARTMENT OF JUSTICE

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PART 301—INMATE ACCIDENT COMPENSATION

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AUTHORITY: 18 U.S.C. 4126, 28 CFR 0.99, and by resolution of the Board of Directors of Federal Prison Industries, Inc.

SOURCE: 46 FR 31206, June 12, 1981, unless otherwise noted.

§ 301.1 Purpose and scope.

(a) As authorized by 18 U.S.C. 4126, the procedures for this part govern the payment of accident compensation to former Federal prison inmates or to their dependents. Such compensation shall be awarded for impairments from injuries sustained while performing work assignments in Federal Prison Industries, Inc., or in institutional work assignments involving the operation or maintenance of a Federal correctional institution.

(b) The Bureau of Prisons also follows uniform procedures for determining both the work-relatedness of an injury sustained by an inmate, and for determining whether lost-time wages are paid to that inmate. Inmates assigned to Federal Prison Industries, Inc., or to paid institutional work assignments involving the operation or maintenance of a Federal correctional institution, may receive lost-time wages for work-related injuries resulting in time lost from the work assignment.

(c) For purposes of lost-time wages and compensation, injury, in addition to an accident which is work-related, shall also be defined to include occupational disease or illness proximately caused by the conditions of the inmate's work assignment.

§ 301.2 Medical attention.

Whenever an inmate worker is injured while in the performance of assigned duty, regardless of how trivial the injury may appear, the inmate shall immediately report the injury to the inmate's official work detail supervisor. The supervisor will take whatever action is necessary to secure for the injured inmate such first aid, medical, or hospital treatment as may be necessary for the proper treatment of the injury. Medical, surgical, and hospital service shall be furnished by the medical staff of the institution. Refusal by an inmate worker to accept such medical, surgical, hospital, or first aid treatment may cause forfeiture of any claim for accident compensation for impairment resulting from the injury.

§ 301.3 Record of injury and initial claim.

After initiating necessary action for medical attention the work detail supervisor shall immediately secure a record of the cause, nature, and exact extent of the injury, and shall see that the injured inmate submits within 48 hours sufficient information for the supervisor to complete Administrative Form 19, Injury Report (Inmate). The names and testimony of all witnesses shall be secured. If the injury resulted from the operation of mechanical equipment, an identifying description of the machine or instrument causing the injury shall be given.

§ 301.4 Report of injury.

(a) The work detail supervisor shall complete an Administrative Form 19, Injury Report (Inmate), on all injuries reported by the inmate, as well as injuries observed by staff. The injury report shall contain a signed statement from the inmate on how the accident occurred. Staff shall provide the inmate with a copy of the injury report. Staff shall then forward the original and remaining copies of the injury report to the institutional safety manager for a review as to its completeness. The institution safety manager shall ensure that a medical description of the injury is included on the Administrative Form 19 whenever the injury is such as to require medical attention. The institution safety manager shall also ensure that the appropriate sections of Administrative Form 19A (Injury—Lost-Time Follow-up Report) are completed and that there is documentation for all reported work injuries which result in lost-time from the work assignment.

(b) When the institution safety manager receives notice, or has reason to believe, that the injury will result in time lost from the work assignment, the institution safety manager shall present both the completed Administrative Form 19, and Administrative Form 19A, with the appropriate sections completed, to the Institution Safety Committee at the Committee's next regularly scheduled meeting. The Safety Committee shall make a written determination, indicated on Administrative Form 19A, of the injury's work-relatedness based on the available evidence and testimony. A copy of the Safety Committee's determination shall be provided to the inmate.

§ 301.5 Prerelease claim for compensation.

(a) As soon as a release date or transfer to a community treatment center is determined, but not in advance of 30 days prior to this date, each inmate injured in industries or on an institutional work assignment who feels that a residual impairment exists as a result of a work-related injury shall be given FPI Form 43, Inmate Claim for Compensation on Account of Work Injury, and shall be informed of the right to make a claim for compensation. Every assistance will be given the inmate to properly prepare the claim if the inmate wishes to file. Claims must be made within 60 days following release from the institution when circumstances preclude submission prior to release. However, a claim for impairment may be allowed within one year after release from the institution or community treatment center, for reasonable cause shown. In each case a medical examination shall be given and a definite statement made as to the impairment caused by the alleged injury. Refusal to submit to a final medical examination before release or transfer to a community treatment center shall result in the forfeiture of all rights to compensation and to future medical treatment. In each case of visible impairment, disfigurement, or loss of member, photographs shall be taken to show the actual condition and shall be transmitted with FPI Form 43.

(b) The claim, after preparation and execution by the inmate, shall be completed by the physician making the final examination. It shall be forwarded promptly to the Claims Examiner, Federal Prison Industries, Inc., Washington, D.C. 20534, accompanied by, or with reference made to, Forms 19, and 19A, Injury Report (Inmate) and Injury—Lost-Time Follow-Up Report, respectively.

§ 301.6 Report of death.

If a work-related injury results in death, an FPI Form 43, an Administrative Form 19, and the findings of any Inquiry Team will be promptly forwarded to the Claims Examiner, Federal Prison Industries, Inc., Washington, D.C. 20534.

§ 301.7 Report of repetitious accidents.

If an inmate worker is injured more than once in a comparatively short time and the circumstances of the injury indicate an awkwardness or ineptitude that in the opinion of the inmate's work supervisor implies a danger of further accidents in the task assigned, the inmate shall be relieved of the performance of the task, and assigned to another task more suitable to the inmate's ability.

§ 301.8 Inmate work assignments.

The classification committee of each institution, which normally designates inmate work assignments, or whoever makes institutional work assignments, will review appropriate medical records, presentence reports, admission summaries, and the like in order to preclude the assignment of individuals to work tasks not compatible with their physical condition. A careful review of all records available is also imperative when inmate workers are reassigned to new and different tasks during their confinement.

§ 301.9 Compensable and noncompensable injuries.

Compensation is paid for "on the job" injuries. This includes not only injuries suffered on an inmate's regular work assignment, but also those injuries resulting from voluntary work, approved by staff, in the operation or maintenance of the institution. Compensation is not paid, however, for injuries resulting from participation in institutional programs (such as programs of a social, recreational, or community relations nature) or from maintenance of one's own living quarters. Furthermore, compensation will not be paid for injuries suffered away from the work location, e.g., while the claimant is going to or leaving work, or going to or coming from lunch outside of the work station or area. Injuries sustained by inmate workers willfully or with intent to injure someone else, or injuries suffered in any activity not related to their work assignment are not compensable, and no claim for compensation for such injuries will be considered. Any injury resulting from willful violation of rules and regulations may prevent an award of compensation.

§ 301.10 Lost-time wages.

(a) *General.* No accident compensation for compensable injuries shall be paid prior to the inmate's release from confinement. However, an inmate worker receives lost-time wages for the number of regular work hours that the inmate is absent from work due to injury sustained in the performance of the inmate's work assignment. Lost-time wages are paid for time lost in excess of three consecutively scheduled workdays. While the day of injury counts as a workday, the time of day that the injury occurs is considered in determining the three consecutive workday limitation.

(b) *Basis for determination of lost-time wages.* Lost-time wages shall be based on the standard hourly rate paid to the inmate at the time of injury. If the inmate is assigned to an institutional work assignment and has been granted a lump sum payment (performance pay), lost-time wages shall be based on the pay in effect at the time of injury.

(c) *Rate of lost-time wages.* The rate of pay shall be 66⅔% of the standard hourly rate for an inmate who is not contributing to the support of dependent(s), and 75% of the standard hourly rate for an inmate who is contributing to the support of dependent(s). Dependent(s) ordinarily refers to any person verified as wife, husband, or child. A determination of dependency for purposes of determining lost-time wages is not binding on any subsequent claim by the inmate to receive inmate accident compensation. A determination on whether the inmate contributes to the support of dependent(s) is ordinarily made by the inmate's timekeeper through the existence of a FPI Dependency Contract, or through a review of the Unit Manager's and/or Business Manager's record of the inmate worker's commissary account withdrawals. Staff shall consider the following factors in making a determination on whether the inmate contributes to the support of a dependent(s):

(1) Whether the inmate contributed at least $5.00 to the support of any dependent(s) during the three months preceding the work-related injury, provided monthly earnings are below the current monthly commissary spending limitation; or

(2) Whether the inmate contributed at least $10.00 to the support of any dependent(s) during the three months preceding the work-related injury, provided monthly earnings exceeded the current monthly commissary spending limitation; or

(3) Whether the inmate contributed at least $5.00 to the support of any

dependent(s) during the six months preceding the work-related injury, provided the inmate has been in the paid work assignment for a period less than three months immediately preceding that injury.

(d) *Continuation of lost-time wages.* The inmate shall receive lost-time wages until the inmate:

(1) Returns to the pre-injury work assignment;

(2) Is reassigned to another work area or program for reasons unrelated to the sustained work injury;

(3) Is medically certified as fit for return to a regular work assignment or to a lighter duty work assignment;

(i) An inmate who refuses to return to a regular work assignment or to a lighter duty work assignment, after medical certification of fitness for such duty, relinquishes all rights to further payment of lost-time wages from the date of such refusal.

(ii) An inmate medically certified as fit for work shall sustain no monetary loss due to a required change in work assignment. Where there is no light duty or regular work assignment available at the same rate of pay as the inmate's pre-injury work assignment, that inmate shall be paid the difference in lost wages. Lost-time wages are paid until a light duty or regular work assignment is available at the same pay rate as the inmate's pre-injury work assignment or until the inmate is medically certified for return to the pre-injury work assignment;

(4) Is transferred to another institution for reasons unrelated to the work injury; or

(5) Is released from Federal custody.

(e) *Appeal of determination.* An inmate who disagrees with the decision on either the work-relatedness of an injury or the rate at which lost-time wages are paid may appeal that decision through the Administrative Remedy Procedure.

§ 301.11 Compensation awards.

The amount of accident compensation shall be determined at the time of release regardless of when during the claimant's period of confinement the injury was sustained or of any payment made in lieu of regular earnings or of any medical or surgical services furnished prior to such release. No claim for compensation will be considered if full recovery occurs while the inmate is in custody and no impairment remains after release.

§ 301.12 Processing of claims.

(a) A claim for inmate accident compensation shall be determined by a Claims Examiner, appointed by the Commissioner, Federal Prison Industries, Inc., under authority delegated to him by the Board of Directors of Federal Prison Industries, pursuant to 28 CFR 0.99. In determining the claim, the Claims Examiner will consider all available evidence. Written notice of the decision, including the reasons therefore, together with information as to the right to appeal the decision, shall be mailed to the claimant at the claimant's last known address.

(b) Appeal of the decision rendered by the Claims Examiner may be made to the Inmate Accident Compensation Committee (hereinafter referred to as the "Committee") appointed by the Commissioner, Federal Prison Industries, Inc., under authority delegated to him by the Board of Directors of Federal Prison Industries pursuant to 28 CFR 0.99. The Committee shall consist of four members and four alternates, with any combination of three thereof required to form a quorum for decision-making purposes.

§ 301.13 Request for hearing or reconsideration, disclosure.

(a) Any claimant not satisfied with the decision of the Claims Examiner shall, upon written request made within 30 days after the date of issuance of such decision or thereafter, upon a showing of good cause, be afforded an opportunity for either a hearing before the Committee, or Committee reconsideration of the decision. A claimant may request a hearing or reconsideration by writing to the Inmate Accident Compensation Committee, Federal Bureau of Prisons, Washington, D.C. 20534.

(b) Upon receipt of claimant's request, a copy of the information upon which the Claims Examiner's initial determination was based shall be mailed to the claimant at the claimant's last known address. Where the Claims Examiner determines the release of information to the claimant is not in the best interest of the claimant, the Claims Examiner may release the information to the claimant's representative or personal physician upon receipt of both a written authorization from the claimant and a written request from the representative or personal physician.

§ 301.14 Committee reconsideration.

If the claimant elects to have the Committee reconsider the initial determination, the claimant may submit documentary evidence which the Committee shall consider in addition to the original record. The Committee shall fix the time in which it will receive evidence, and may request additional documented evidence from the claimant or other source. A copy of the Committee's reconsidered decision shall be mailed to the claimant at the claimant's last known address.

§ 301.15 Notice, time, place of hearing and postponement.

(a) The hearing or reconsideration shall be held within 60 days of the Committee's receipt of claimant's request, except as provided in paragraph (b) of this section. Notice of the date set for Committee action shall be mailed to the claimant at the claimant's last known address. When practical, the hearing shall be set at a time convenient for the claimant, and all hearings shall be conducted at the Central Office of the Bureau of Prisons, Washington, D.C. 20534.

(b) A hearing or reconsideration may be postponed at the option of the Committee, or, if good cause is shown, upon request of the claimant. A claimant shall be considered to have abandoned the request for a hearing if the claimant fails to appear at the time and place set for hearing and does not, within 10 days after the time set for that hearing, show good cause for failure to appear. A claimant may change the request from either hearing to reconsideration or reconsideration to hearing, but must give the Committee notice of such change at least 10 days prior to the previously scheduled action.

§ 301.16 Witnesses.

(a) If a claimant plans to present witnesses at the hearing, the claimant must provide the Committee with a list of the witnesses' names and addresses and an outline of their proposed testimony at least 10 days prior to the scheduled hearing date. The Committee has no authority to compel the attendance of witnesses.

(b) Any person confined at the time of the hearing in a Federal, state or local penal or correctional institution may not appear as a witness, but that person's testimony may be received in the form of a written statement.

§ 301.17 Conduct of hearing.

(a) In conducting the hearing, the Committee is not bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, but may conduct the hearing in such a manner as to best ascertain the rights of the claimant and the obligations of the government. At such hearing, the claimant shall be afforded an opportunity to present evidence in support of the claim under review.

(b) The Committee shall receive such relevant evidence as may be adduced by the claimant and shall, in addition, receive such other evidence as the Committee may determine to be necessary and useful in evaluating the claim. Evidence may be presented orally and/or in the form of written statements and exhibits.

(c) In order to fully evaluate the claim, the Committee may question the claimant and any witness(es) appearing before the Committee on behalf of the claimant or government.

(d) A claimant, or the claimant's representative, may question the Committee or any witness(es) appearing before the Committee on behalf of the government, but only on matters which the Committee determines are relevant to its evaluation of the claim.

(e) The hearing shall be recorded, and a copy of the recording, or, in the discretion of the Committee, a transcript thereof, shall be made available to the claimant upon request, provided such request is made not later than 90 days following the date of the hearing.

(f) The Committee shall mail a written notice of its determination to affirm or amend the Claims Examiner's initial decision with the reasons therefor to the claimant at the claimant's last known address not later than 30 days after the date of the hearing, unless the Committee needs to make a further investigation as a result of information received at the hearing.

§ 301.18 Expenses.

Federal Prison Industries, Inc., may not assume any expenses incurred by the claimant, the claimant's representative, or any witness(es) appearing on behalf of the claimant in connection with attendance at the hearing.

§ 301.19 Representation of claimant.

(a) A claimant may appoint any person to represent the claimant's interest in any proceeding for determination of a claim under this part so long as that person is not confined in any Federal, state, or local penal or correctional institution. Claimant's appointment of a representative must be in writing with a copy filed with the Committee or on the record at the hearing.

(b) Federal Prison Industries, Inc., may not assume responsibility for any costs related to the services of a claimant's representative.

(c) A representative appointed in accordance with paragraph (a) of this section may make or give, on behalf of the claimant being represented, any request or notice relative to any proceeding before the Committee. A representative shall be entitled to present or elicit evidence or make allegations as to facts and law in any proceeding affecting the claimant being represented and to obtain information with respect to the claim of such claimant to the same extent as such party. A request for additional information, or notice to any claimant of any administrative action, determination, or decision, may be sent to the representative of such claimant, and such notice or request shall have the same force and effect as if it had been sent to the claimant.

§ 301.20 Review by the Associate Commissioner of Federal Prison Industries, Inc.

Any claimant not satisfied with the Committee's reconsidered decision or decision after a hearing may appeal such decision to the Associate Commissioner of Federal Prison Industries, Inc., Washington, D.C. 20534. Written notice of the appeal must be mailed within 90 days from the date of the reconsidered decision or the decision after a hearing. For good cause shown, the Associate Commissioner may waive the failure to appeal within this time limitation. The Associate Commissioner shall review the record and shall affirm or amend the appealed decision not later than 90 days after receipt of claimant's notice of appeal. Written notice of the Associate Commissioner's decision shall be mailed to the claimant's last known address, or to the claimant's representative.

§ 301.21 Establishing the amount of the award.

In determining the amount of accident compensation to be paid consideration will be given to the permanency and severity of the injury in terms of temporary and permanent impairment. The provisions of the Federal Employees' Compensation Act shall be followed when practicable. The minimum wage prescribed by the Fair Labor Standards Act, applicable at the time of each periodic payment, shall be used as the wage basis in determining the amount of such compensation. In no event shall compensation exceed that provided in the Federal Employees' Compensation Act (Title 18, United States Code 4126).

§ 301.22 Time and method of payment of compensation award.

(a) Upon determination of the amount of compensation to be paid, the Claims Examiner shall furnish a copy of the award authorization to the claimant or to the claimant's representative. Monthly payments are ordinarily mailed the first day of the month following the month in which the award is effective. Payments will ordinarily be made through the office of the U.S. Probation Officer of the district in which the claimant resides. When the amount of the awards exceeds $500, lump sum payments will rarely be made, and only in exceptional cases where it is clearly shown to be beneficial to the claimant or the claimant's dependents.

(b) When requested by the claimant and approved by the Claims Examiner, accident compensation shall be paid to dependents of the claimant. In all cases claimant must indicate in detail those persons who are dependent on the claimant, their relationship, and any other relevant facts so that the Claims Examiner will be able to determine dependency. In the event of death, compensation may be paid to dependents under the provisions of the Federal Employees' Compensation Act, if it is determined that the death was causally related to the work injury. In the event of death, a dependent may exercise the right of review.

§ 301.23 Medical treatment required following release.

The Corporation will not pay the cost of medical, hospital treatment, or any other related expense incurred after release from confinement unless the Claims Examiner either authorizes such treatment in advance or determines that circumstances warrant the waiver of this requirement.

§ 301.24 Civilian compensation laws distinguished.

Awards made under Inmate Accident Compensation differ from awards made under civilian workmen's compensation laws in that hospitalization is usually completed prior to the inmate's release from the institution and, except for a three-day waiting period, the inmate receives wages while absent from work. Other factors necessarily must be considered that do not enter into the administration of civilian workmen's compensation laws. As in the case of Federal employees who allege they have sustained work-related injuries, the burden of proof lies with the claimant to establish that the claimed impairment is causally related to the claimant's work assignment.

§ 301.25 Employment of attorneys.

It is not necessary that a claimant employ an attorney or other person to assert a claim or effect collection of an award. Under no circumstances will the assignment of any award be recognized.

§ 301.26 Exclusive remedy.

Inmates who are subject to these accident compensation laws are barred from recovering under the Federal Tort Claims Act. Recovery under the compensation law was declared by the U.S. Supreme Court to be the exclusive remedy in the case of *U.S.* v *Demko*, 385 U.S. 149, in December of 1966.

CHAPTER V—BUREAU OF PRISONS, DEPARTMENT OF JUSTICE

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SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 500—GENERAL DEFINITIONS

§ 500.1 Definitions.

As used in this chapter, (a) The "Warden" means the chief executive officer of a U.S. Penitentiary, Federal Correctional Institution, Medical Center for Federal Prisoners, Federal Prison Camp, Federal Community Treatment Center, Federal Detention Center, Metropolitan Correctional Center, or any federal penal or correctional institution or facility. "Warden" also includes any staff member with authority explicitly delegated by any chief executive officer.

(b) "Staff" means any employee of the Bureau of Prisons or Federal Prison Industries, Inc.

(c) "Inmate" means any person who is committed to or in the custody of the U.S. Attorney General and who is placed or designated to serve his sentence in a Bureau of Prisons institution. "Inmate" also includes any person who is serving a civil contempt sentence in an institution of the Bureau of Prisons.

(d) "Institution" means a U.S. Penitentiary, Federal Correctional Institution, Medical Center for Federal Prisoners, Federal Prison Camp, Federal Community Treatment Center, Federal Detention Center, or Metropolitan Correctional Center.

(e) "Shall" means an obligation is imposed.

(f) "May" means a discretionary right, privilege, or power is conferred.

(g) "May not" means a prohibition is imposed.

(h) "Contraband" means anything that an inmate is not authorized to possess in an institution.

(5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99)

[44 FR 38244, June 29, 1979]

PART 501—SCOPE OF RULES

§ 501.1 Institutional emergencies.

When there is an institutional emergency which the Warden considers a threat to human life or safety, the Warden may suspend the operation of the rules contained in this chapter to the extent he deems necessary to handle the emergency. The Warden shall notify the Director of the Bureau of Prisons within eight hours of any suspension of rules under this section.

(18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99)

[44 FR 38244, June 29, 1979]

PART 503—BUREAU OF PRISONS CENTRAL OFFICE, REGIONAL OFFICES, INSTITUTIONS, AND STAFF TRAINING CENTERS

Sec.

503.1 Bureau of Prisons Central Office.
503.2 Bureau of Prisons Northeast Regional Office.
503.3 Bureau of Prisons Southeast Regional Office.
503.4 Bureau of Prisons North Central Regional Office.
503.5 Bureau of Prisons South Central Regional Office.
503.6 Bureau of Prisons Western Regional Office.
503.7 Bureau of Prisons Staff Training Centers.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4003, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99; Attorney General Orders 646-76 (41 FR 14805), 842-79 (44 FR 44629), 854-79 (44 FR 58002), 860-79 (44 FR 64922), 904-80 (45 FR 52284), 938-81 (46 FR 22296), 954-81 (46 FR 45714).

Source: 46 FR 24898, May 1, 1981, unless otherwise noted.

§ 503.1 Bureau of Prisons Central Office.

The Bureau of Prisons Central Office is located at 320 First Street, N.W., Washington, D.C. 20534.

§ 503.2 Bureau of Prisons Northeast Regional Office.

The Bureau of Prisons Northeast Regional Office is located at Scott Plaza II, Industrial Highway, Philidelphia, Pennsylvania 19113. The following institutions are located within this region:

(a) Federal Correctional Institution (FCI), Alderson, West Virginia 24910

(b) Federal Prison Camp (FPC), Allenwood, Montgomery, Pennsylvania 17752

(c) FCI, Danbury, Connecticut 06810

(d) United States Penitentiary (USP), Lewisburg, Pennsylvania 17837

(e) FCI, Morgantown, West Virginia 26505

(f) Metropolitan Correctional Center (MCC), 150 Park Row, New York, New York 10007

(g) FCI, Otisville, New York 10963

(h) FCI, Petersburg, Virginia 23803

(i) FCI, Ray Brook, New York 12977.

§ 503.3 Bureau of Prisons Southeast Regional Office.

The Bureau of Prisons Southeast Regional Office is located at 523 McDonough Boulevard, SE., Atlanta, Georgia 30315. The following institutions are located within this region:

(a) FCI, Ashland, Kentucky 41101

(b) USP, Atlanta, Georgia 30315

(c) FCI, Old N. Carolina Highway 75, Butner, North Carolina 27509

(d) FPC, Eglin Air Force Base, Florida 32542

(e) FCI, Lexington, Kentucky 40507

(f) FPC, Maxwell Air Force Base, Montgomery, Alabama 36112

(g) FCI, 1101 John A Denies Road, Memphis, Tennessee 38134

(h) FCI, 15801 SW. 137th Avenue, Miami, Florida 33177

(i) FCI, Talladega, Alabama 35160

(j) FCI, Tallahassee, Florida 32301.

§ 503.4 Bureau of Prisons North Central Regional Office.

The Bureau of Prisons North Central Regional Office is located at 10920 Ambassador Drive, Airworld Center, Kansas City, Missouri 64153. The following institutions are located within this region:

(a) MCC, 71 W. Van Buren Street, Chicago, Illiinois 60605

(b) USP, Leavenworth, Kansas 66048

(c) USP, Marion, Illinois 62959

(d) FCI, Milan, Michigan 48160

(e) FCI, Oxford, Wisconsin 53952

(f) FCI, Sandstone, Minnesota 55072

(g) Medical Center for Federal Prisoners (MCFP), Springfield, Missouri 65802

(h) USP, Terre Haute, Indiana 47808.

§ 503.5 Bureau of Prisons South Central Regional Office.

The Bureau of Prisons South Central Regional Office is located at 1607 Main, Suite 700, Dallas, Texas 75201. The following institutions are located within this region:

(a) FCI, Bastrop, Texas 78602

(b) FPC, Big Spring, Texas 79720

(c) FCI, El Reno, Oklahoma 73036

(d) FCI, Fort Worth, Texas 76119

(e) FCI, La Tuna, Texas 88021

(f) FPC, Seagoville, Texas 75159

(g) FCI, Texarkana, Texas 75501.

§ 503.6 Bureau of Prisons Western Regional Office.

The Bureau of Prisons Western Regional Office is located at 330 Primrose Road, 5th Floor, Burlingame, California 94010. The following institutions are located within this region:

(a) FPC, P.O. Box 500, Boron, California 93516

(b) FCI, Englewood, Colorado 80110

(c) Federal Detention Center (FDC), Florence, Arizona 85232

(d) USP, Lompoc, California 93438.

(e) FCI, Pleasanton, California 94568.

(f) FPC, Safford, Arizona 85546.

(g) MCC, San Diego, California 92101.

(h) FCI, Terminal Island, California 90731.

(i) FCI, Terminal Island, California 90731.

[46 FR 24898, May 1, 1981, as amended at 46 FR 59507, Dec. 4, 1981]

§ 503.7 Bureau of Prisons Staff Training Centers.

The Bureau of Prisons Staff Training Centers are located at:

(a) Federal Law Enforcement Training Center, Building 67, Glynco, Georgia 31524.

(b) Denver Staff Training Center, 15400 E. 14th Place, Suite 500, Aurora, Colorado 80011.

(c) Food Service Training Center, c/o FCI, Oxford, Wisconsin 53952.

[46 FR 24898, May 1, 1981, as amended at 46 FR 59507, Dec. 4, 1981]

PART 512—RESEARCH

Subpart A—[Reserved]

Subpart B—Research

Sec.

512.10 Purpose and scope.
512.11 Definitions.
512.12 Requirements for research projects and researchers.
512.13 Content of research proposal.
512.14 Processing of proposals.
512.15 Institution rules.
512.16 Incentives.
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512.22 Copyright provisions.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

SOURCE: 46 FR 48577, Oct. 1, 1981, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Research

§ 512.10 Purpose and scope.

Prospective researchers must obtain approval as outlined in this rule before conducting research within the Bureau of Prisons. An individual who wishes to conduct a research project within the Bureau of Prisons shall submit a request to the Bureau providing specified information on the proposed research project. The Bureau of Prisons shall consider requests for authorization of routine and non-routine proposals as described in § 512.11(d) and (e).

§ 512.11 Definitions.

(a) For the purpose of this rule, a research project is the systematic collection of information about or from former or present inmates or employees, analysis of the information, and preparation of a report of findings. Routine statistical tabulations and program audits undertaken by employees for administrative purposes only are not defined as research projects.

(b) For the purpose of this rule, an employee is a member of the staff of the Bureau of Prisons or a consultant under contract to the Bureau of Prisons who performs duties in furtherance of an agency function under supervision provided by the Bureau.

(c) For the purpose of this rule, a non-employee is any person not defined as an employee under § 512.11(b).

(d) A non-routine proposal has one or more of the following characteristics.

(1) The proposed research will be conducted at the Central Office.

(2) The proposed research will be conducted at the Regional Office or at two or more institutions within the same region.

(3) Execution of the proposed research requires coordination between at least two regions of the Burearu of Prisons.

(4) Execution of the proposed research requires coordination between at least two divisions within a Governmental Department or between at least two Departments of the Federal Government.

(5) The proposal raises major issues of research policy.

(6) The proposed research involves follow-up of an inmate after release from confinement.

(7) Execution of the proposed research requires sizeable financial and/ or staff support from the Bureau of Prisons.

(e) A routine proposal has none of the special characteristics which define a non-routine proposal.

(f) A researcher is a person who has met the qualifications of § 512.12 and has received written approval from the Director, Bureau of Prisons, to conduct a research project within the Bureau of Prisons.

(g) A subject is a current or former inmate or employee of the Bureau of Prisons about or from whom a researcher collects information during the conduct of a research project authorized under this rule.

(h) "Minimal risk" as defined by U.S. Department of Health and Human Services (see 45 CFR 46) means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or pyschological examinations or tests.

§ 512.12 Requirements for research projects and researchers.

The Director, Bureau of Prisons, may authorize a researcher to conduct a research project, subject to the following conditions:

(a) The project has an adequate research design.

(b) The project will contribute to the advancement of knowledge about corrections.

(c) The project is consistent with the Bureau of Prisons' rule on Medical Experimentation and Pharmaceutical Testing.

(d) The project must present no more than minimal risk, as defined in § 512.11(h), to the subject. The rights, health and human dignity of individuals involved will be respected.

(e) The researcher has academic preparation or experience in the area of study of the proposed research.

(f) The researcher assumes responsibility for actions of a non-employee engaged to participate in the research project.

(g) The researcher agrees not to provide research information which identifies a subject to any person without that subject's prior written consent to release the information.

(h) The researcher agrees to adhere to applicable provisions of the Privacy Act of 1974 and regulations pursuant to this Act.

(i) The researcher who is a non-employee shall sign a statement in which the researcher agrees to adhere to the provisions of this rule.

§ 512.13 Content of research proposal.

In submitting the research proposal, the applicant shall provide the following information:

(a) Summary statement which includes the name(s) and vitae of the researcher(s); the title of the project; an abstract of the project; duration of the project; number of subjects (staff/inmate) required, including amount of time required from each; and an indication of risk or discomfort involved as a result of participation.

(b) Comprehensive statement which includes a detailed description of all possible risks and discomforts and a discussion of the likelihood that these risks and discomforts will actually occur; information on the purpose of the study; methodology to be employed; anticipated results; their significance and perceived benefits; resources to be utilized; indication of whether Bureau of Prisons participation and cooperation are needed after completion of project; and appendices of all relevant research materials.

§ 512.14 Processing of proposals.

Except as specified in paragraph (d) of this section, all research proposals will be reviewed by at least one Research Committee at either the institutional, Regional Office, or Central Office level.

(a) Routine proposals are first submitted to the Research Committee at the institutional level.

(1) The Warden shall review the recommendations of the Research Committee, and shall submit institutional recommendations in writing to the appropriate Regional Director.

(2) The Regional Director shall review the recommendations submitted by the institution and shall, in turn, submit recommendations of the Regional Office in writing to the Director of Research in the Central Office.

(3) The Director of Research will coordinate materials for review by the Director of the Bureau of Prisons.

(b) Except as specified in paragraph (c) of this section, non-routine proposals are first submitted to the Director of Research, Central Office. The Director of Research shall determine a review process, to include, at a minimum, review by at least one appropriate Research Committee. The Director of Research shall review Research

Committee and other recommendations made and shall submit them in writing to the Director, Bureau of Prisons.

(c) Non-routine proposals for research conducted at a Regional Office or at two or more institutions within the same region are first submitted to the appropriate Regional Director. The Regional Director or designee shall determine a review process, to include, at a minimum, review by a Research Committee and the Regional Research Administrator. The Regional Director shall review recommendations submitted and, in turn, shall submit the recommendations of the Regional Office to the Director of Research, Central Office. The Director of Research shall review recommendations made and shall submit them in writing to the Director, Bureau of Prisons.

(d) The Director of Research, Central Office, may exercise the authority of a required research committee and make a recommendation to the Director, Bureau of Prisons on a research proposal under an expedited review process when in the judgment of the Director of Research, Central Office, the research proposal is determined to meet the minimal risk standard and the research:

(1) Neither manipulates the subject's behavior nor involves stress to the subject;

(2) Does not involve a medical procedure; and

(3) Is not of a sensitive nature.

When the Director of Research, Central Office, determines that an expedited review process is appropriate, he/she shall document in writing the reasons for this determination.

(e) The Director, Bureau of Prisons, has final authority to approve or disapprove all research proposals. This authority may not be delegated.

(f) The Director, Bureau of Prisons shall notify in writing the involved region(s), institution(s), and the prospective researcher of the final decision on a research proposal.

(g) An applicant may submit a preliminary research proposal for review by staff. Staff response to the preliminary proposal does not constitute a final decision.

§ 512.15 Institution rules.

A researcher shall observe the rules of the institution or office in which the research is conducted. Staff of the responsible institution or office shall inform the researcher of the local rules.

§ 512.16 Incentives.

Incentives may be provided, but are restricted to soft drinks and snacks given at the test setting.

§ 512.17 Access to Bureau of Prisons records.

(a) Employees (includes consultants) of the Bureau of Prisons who are conducting authorized research projects shall have access to those records which relate to the subject and are necessary to purpose of the research project without having to obtain the subject's consent.

(b) A non-employee of the Bureau of Prisons is limited in access to information available under the Freedom of Information Act (5 U.S.C. 552).

§ 512.18 Informed consent.

(a) Before commencing a research project requiring participation by staff or inmates, the researcher shall give each participant a written Informed Consent Statement containing the following information:

(1) A statement that participation is completely voluntary and that the participant may withdraw consent and end participation in the project at any time without penalty or prejudice;

(2) A statement that participation in the research project will have no effect on the inmate participant's release date or parole eligibility;

(3) Identification of the researcher(s);

(4) Objectives of the research project;

(5) Procedures to be followed in the conduct of research;

(6) Purpose of each procedure;

(7) Anticipated uses of the results of the research;

(8) A statement of benefits reasonably to be expected;

(9) A declaration concerning discomfort and risk, including a description of anticipated discomfort and risk;

(10) An offer to answer questions about the research project; and

(11) Appropriate additional information as needed to describe adequately the nature and risks of the research.

(b) A researcher who is employee of the Bureau of Prisons shall add to the Informed Consent Statement a statement of the authority under which the research is conducted.

(c) A researcher who is an employee of the Bureau of Prisons shall obtain the subject's signature on the statement of informed consent in each of the following circumstances:

(1) If the activity of the subject requires something other than responding to a questionnaire or interview; or

(2) If the Director of Research determines the research project or data-collection instrument is of a sensitive nature.

(d) A researcher who is a non-employee of the Bureau of Prisons shall obtain the subject's signature on the statement of informed consent prior to initiation of the research activity. The signed statement shall be submitted to the appropriate research committee.

§ 512.19 Monitoring approved research projects.

(a) The researcher shall notify the appropriate Research Committee of all planned methodological changes in a research project. If the Research Committee considers the change to be significant, the Committee shall obtain written approval from the Director of Research, Central Office, prior to authorizing the implementation of the change.

(b) The Institution Research Committee shall monitor all research conducted at the institution and report any violations of research policy to the Warden, the Regional Director, and the Director of Research, Central Office.

(c) The Central Office Research Committee or, where appropriate, a Regional Office Research Committee shall: (1) Monitor all research projects which are not conducted at an institution, and/or (2) perform a coordinating function for other projects (e.g. research conducted between regions, or Bureau-wide). The Regional or Central Office Research Committee shall report any violations of research policy, through the Director of Research, Central Office, to the Director, Bureau of Prisons.

(d) The Director, Bureau of Prisons, may suspend or terminate a research project if it is believed that the project violates research policy or that its continuation may prove detrimental to the inmate population, to the staff, or to the orderly operation of the institution.

§ 512.20 Reports.

At least once a year, the researcher shall provide the Director of Research, Central Office, with an original and five copies of a report on the progress of the research.

Within 10 days after preparation of the report of findings, the researcher shall distribute at least one copy of the report of findings to each of the following: the Director of Research, Central Office; the Regional Director; the Regional Research Administrator, and the Warden(s) and chairperson(s) of the research committee at institutions which provided data or assistance. The researcher shall include an abstract in the report of findings.

§ 512.21 Publication of results of research project.

(a) A researcher may publish in book form and in professional journals the results of a research project conducted under this rule.

(1) On publication of results, the researcher shall acknowledge the Bureau of Prisons participation in the research project.

(2) The researcher shall expressly disclaim approval or endorsement of the published material as an expression of the policies or views of the Bureau of Prisons.

(b) Prior to publication of the results of a research project conducted under this rule, the researcher shall provide six copies of the material accepted for publication, for informational purposes only, to the Director of Research in the Central Office of the Bureau of Prisons.

§ 512.22 Copyright provisions.

(a) An employee (includes consultant) of the Bureau of Prisons may not copyright a work prepared as a part of his or her official duties.

(b) Subject to a royalty-free, non-exclusive and irrevocable license, which the Bureau of Prisons reserves, to reproduce, publish, and translate and otherwise to use and to authorize others to publish and use such materials, a non-employee may copyright original materials developed as a result of research conducted under this rule.

(c) As a precondition to the conduct of research under this rule, a non-employee shall grant in writing to the Bureau of Prisons a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, translate and otherwise to use and to authorize others to publish and use original materials developed as a result of research conducted under this rule.

PART 513—ACCESS TO RECORDS

Subpart A—[Reserved]

Subpart B—Production or Disclosure of Material or Information: FBI Identification Records; FBI Criminal History Records

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513.10 Purpose and scope.
513.11 Procedures applicable where an FBI identification record is sought.
513.12 Procedures applicable where an FBI criminal history record (NCIC/CCH) is sought.
513.13 Inmate request for record clarification.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Source: 45 FR 44228, June 30, 1980, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Production or Disclosure of Material or Information: FBI Identification Records; FBI Criminal History Records

§ 513.10 Purpose and scope.

By authorization of the Federal Bureau of Investigation (FBI), the Bureau of Prisons may provide an inmate with a copy of his FBI identification record commonly known as a rap sheet. Where an inmate's criminal history record has been computerized, staff may provide a copy of the National Crime Information Center Computerized Criminal History record (NCIC/CCH) at the inmate's request.

§ 513.11 Procedures applicable where an FBI identification record is sought.

(a) The inmate may ask institution staff for a copy of his FBI identification record.

(b) Staff shall provide the inmate with a copy of the requested record.

(c) An inmate who so desires may obtain a copy of the identification record directly from the FBI by following the procedure outlined in 28 CFR 16.30 et seq.

(1) Bureau of Prisons staff shall assist the inmate to obtain the fingerprint impressions required to be submitted with such an application.

(2) The inmate may direct that funds be withdrawn from his institution account to pay the applicable fee.

§ 513.12 Procedures applicable where an FBI criminal history record (NCIC/CCH) is sought.

(a) An inmate whose criminal history record is stored in the FBI's National Crime Information Center Computerized Criminal History records may ask institution staff for a copy of this record.

(b) Staff shall provide the NCIC/CCH record only in response to a request from the inmate who is the subject of the record.

(c) Staff shall honor only one such request per inmate per month.

(d) An inmate who so desires may address the request for his NCIC/CCH record directly to the FBI according to the procedure outlined in § 513.11(c).

§ 513.13 Inmate request for record clarification.

Where the inmate believes that the record is incorrect or inaccurate, the inmate may follow procedures outlined in 28 CFR 16.30 et seq.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 522—ADMISSION TO INSTITUTION

Subpart A—[Reserved]

Subpart B—Civil Contempt of Court Commitments

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522.20 Purpose and scope.
522.21 Procedures.

Subpart D—Voluntary Surrender Commitments and Transfers to Bureau of Prisons Facilities

522.30 Purpose and scope.

Subpart E—Admission and Orientation Program

522.40 Purpose and scope.
522.41 Responsibility.
522.42 Guidelines for an admission and orientation program.

AUTHORITY: 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509; 28 CFR 0.95-0.99.

SOURCE: 44 FR 38244, June 29, 1979, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Civil Contempt of Court Commitments

§ 522.10 Purpose and scope.

Occasionally federal civil commitments for contempt of court may be referred to the Bureau of Prisons. These cases are not regular commitments to the custody of the Attorney General and are not convictions for any offense against the laws of the United States. The Bureau of Prisons cooperates with the federal courts in implementing the sentence by making its facilities and resources available. The confinement of civil contempt inmates shall terminate when the Bureau of Prisons receives notification from the court that the reason for the contempt commitment has ended or that the inmate is to be released for any other reason.

§ 522.11 Procedures.

(a) The United States Marshal's Service has primary jurisdiction in federal civil contempt commitments.

(b) When a U.S. Marshal requests designation from the Bureau of Prisons for a federal civil contempt commitment because local jails are not suitable, due to medical, security or other reasons, staff may designate the nearest Bureau institution having the necessary facilities.

(c) When the committing court specifies a Bureau of Prisons institution as the place of incarceration in its contempt order, the Bureau of Prisons shall designate that specified facility in accordance with the judicial wishes, unless there is a reason for not placing the inmate in that facility, in which case the matter shall be called to the attention of the court and an attempt made to arrive at an acceptable place of confinement with the agreement of the committing court.

(d) If an inmate is serving a federal criminal sentence when a civil contempt sentence is ordered, the criminal sentence is suspended for the duration of the civil contempt sentence and time spent serving the contempt sentence is inoperative on any sentence being served, including a Narcotic Addict Rehabilitation Act or Youth Corrections Act commitment, unless the court committing for the contempt orders otherwise.

(e) If a civil contempt is in effect when a criminal sentence is ordered, the criminal sentence runs concurrently with the contempt sentence, unless the judge issuing the criminal judgment specifically states that any sentence imposed is to run consecutively to preserve the intended effect of the civil contempt order.

(f) An inmate serving a civil contempt sentence in a Bureau institution will be treated the same as a person awaiting trial; where the inmate is serving a civil contempt sentence and a concurrent criminal sentence, the inmate will be treated the same as a person serving a criminal sentence.

(g) An inmate is not entitled to statutory or extra good time credits under 18 U.S.C. 4161-62 while only the civil contempt sentence is in effect. Time spent serving only a civil contempt sentence is not considered jail time under 18 U.S.C. 3568.

Subpart C—Intake Screening

§ 522.20 Purpose and scope.

Bureau of Prisons staff screen newly arrived inmates to ensure that Bureau health, safety, and security standards are met.

(5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99)

[45 FR 44229, June 30, 1980]

§ 522.21 Procedures.

(a) Except for such camps and other satellite facilities where segregating a newly arrived inmate in detention is not feasible, the Warden shall ensure that a newly arrived inmate is cleared by the Medical Department and provided a social interview by staff before assignment to the general population.

(1) Immediately upon an inmate's arrival, staff shall interview the inmate to determine if there are non-medical reasons for housing the inmate away from the general population. Staff shall evaluate both the general physical appearance and emotional condition of the inmate.

(2) Within 24 hours after an inmate's arrival, medical staff shall medically screen the inmate in compliance with Bureau of Prisons' medical procedures to determine if there are medical reasons for housing the inmate away from the general population or for restricting temporary work assignments.

(3) Staff shall place recorded results of the intake medical screening and the social interview in the inmate's central file.

(5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99)

[45 FR 44229, June 30, 1980]

Subpart D—Voluntary Surrender Commitments and Transfers to Bureau of Prisons Facilities

§ 522.30 Purpose and scope.

When the court orders or recommends an unescorted commitment to a Bureau of Prisons institution, the Bureau of Prisons authorizes the commitment and designates the institution for service of sentence. The Bureau of Prisons also authorizes furlough transfers of inmates between Bureau of Prisons institutions or to nonfederal institutions in appropriate circumstances in accordance with 18 U.S.C. 4082, and within the guidelines of the Bureau of Prisons policy on furloughs, which allows inmates to travel unescorted and to report voluntarily to an assigned institution.

Subpart E—Admission and Orientation Program

AUTHORITY: 5 U.S.C. 301, 18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

SOURCE: 46 FR 59507, Dec. 4, 1981, unless otherwise noted.

§ 522.40 Purpose and scope.

(a) Each inmate committed or transferred to a Bureau of Prisons institution shall become involved in the institution's Admission and Orientation (A&O) Program. The Warden shall ensure that staff involved with this program offer each newly committed inmate an orientation to the institution, to include information on institutional requirements and, whenever practicable, visits to the various areas of the institution. The institution admission and orientation program also shall provide the inmate with an awareness of the:

(1) Inmate's rights and responsibilities;

(2) Institution's program opportunities; and

(3) Institution's disciplinary system.

(b) Staff shall develop orientation materials (for example, a pamphlet) to supplement lectures and discussions.

(c) Pre-trial inmates and inmates in holdover status (en route to a different institution) are excluded from the provisions of this rule.

§ 522.41 Responsibility.

(a) The Warden shall assign to a staff member the responsibility to coordinate the institution's A&O Program.

(b) Staff involved in the lecture portion of the A&O Program shall develop an outline of the information they wish to include in their presentation.

(c) A staff member involved in the A&O Program who considers an inmate to be experiencing significant emotional stress shall notify the A&O staff coordinator of this determination so that the inmate may be offered appropriate assistance.

§ 522.42 Guidelines for an admission and orientation program.

(a) Location—Each Warden shall determine the appropriate location for the institution's A&O Program.

(b) Quarters—Each Warden shall establish procedures for the assignment of living quarters.

(c) Inmate Participation—The newly committed inmate is to be provided the opportunity to see and participate in institutional activities.

(d) Activities—The A&O staff coordinator is to ensure that the admission and orientation program provides a full schedule of activities for the newly committed inmate. Scheduled activities shall include exposure to programs responsive to a specialized need of the inmate, as well as exposure to various work assignments, education programs, and physical and social activity.

(e) Telephone Calls—Newly committed inmates shall ordinarily be permitted to complete at least two local or collect long distance phone calls during the admission process.

(f) Length of Admission and Orientation Program—An inmate's involvement in the institution's A&O program is based on the time necessary to accomplish the program's objectives.

(g) Documentation of A&O Program Involvement—Staff shall prepare documentation that the inmate has received a copy of the institution's inmate handbook and has completed the institution's admission and orientation program. Staff shall have the inmate sign and date a copy of this document. The original of this document shall be placed in the inmate central file.

PART 523—COMPUTATION OF SENTENCE

Subpart A—Good Time

Sec.
523.1 Definitions.

Subpart B—Extra Good Time

523.10 Purpose and scope.
523.11 Meritorious good time.
523.12 Work/study release good time.
523.13 Community treatment center good time.
523.14 Industrial good time.
523.15 Camp or farm good time.
523.16 Lump sum awards.
523.17 Procedures.

Authority: 5 U.S.C. 301; 18 U.S.C. 3568, 4001, 4042, 4081, 4082, 4161-4166, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Source: 44 FR 38245, June 29, 1979, unless otherwise noted.

Subpart A—Good Time

§ 523.1 Definitions.

(a) "Extra Good Time" means a credit to a sentence as authorized by 18 U.S.C. 4162 for performing exceptionally meritorious service or for performing duties of outstanding importance in an institution or for employment in a Federal Prison Industry or Camp. "Extra Good Time" thus includes Meritorious Good Time, Work/Study Release Good Time, Community Treatment Center Good Time, Industrial Good Time, Camp or Farm Good Time, and Lump Sum Awards. Extra good time and seniority are inseparable with the exception of lump sum awards for which no seniority is earned.

(b) "Seniority" refers to the time accrued in an extra good time earning status. Twelve months of "seniority" automatically cause the earning rate to increase from three days per month to five days per month and seniority is then vested.

(c) "Earning Status" refers to the status of an inmate who is in an assignment or employment which accrues extra good time.

Subpart B—Extra Good Time

§ 523.10 Purpose and scope.

The Bureau of Prisons awards extra good time credit for performing exceptionally meritorious service, or for performing duties of outstanding importance or for employment in an industry or camp. An inmate may earn only one type of extra good time award at a time (e.g., an inmate earning industrial or camp good time is not eligible for meritorious good time), except that a lump sum award as provided in § 523.16 may be given in addition to another extra good time award. The Warden and the Institution Discipline Committee may not forfeit or withhold extra good time. The Warden may disallow or terminate the awarding of any type of extra good time (except lump sum awards), but only in a nondisciplinary context and only upon recommendation of staff. The Institution Discipline Committee may disallow or terminate the awarding of any type of extra good time (except lump sum awards) as a disciplinary sanction. Once an awarding of meritorious good time has been terminated, the Warden must approve a new staff recommendation in order for the award to recommence. A "disallowance" means that an inmate does not receive an extra good time award for only one calendar month. Unless other action is taken, the award resumes the following calendar month. A "disallowance" must be for the entire amount of extra good time for that calendar month. There may be no partial disallowance. A decision to disallow or terminate extra good time may not be suspended pending future consideration. A retroactive award of meritorious good time may not include a month in which extra good time has been disallowed or terminated.

§ 523.11 Meritorious good time.

(a) Staff is responsible for recommending meritorious good time based upon work performance. Each recommendation must include a justification which clearly shows that the work being performed is of an exceptionally meritorious nature or is of outstanding importance in connection with institutional operations. Work performance or the importance of the work performed is the only criteria for awarding meritorious good time.

(b) Meritorious good time may be retroactively awarded for three months, excluding the month in which the recommendation is made, provided staff substantiate the inmate's eligibility. Meritorious good time may not be awarded prior to the beginning date of the sentence.

(c) Meritorious good time continues uninterrupted regardless of work assignment changes unless the Warden or the Institution Discipline Committee takes specific action to terminate or disallow the award.

[44 FR 38245, June 29, 1979, as amended at 45 FR 75125 Nov. 13, 1980]

§ 523.12 Work/study release good time.

Extra good time for an inmate in work or study release programs is awarded automatically, beginning on the date the inmate is assigned to the program and continuing without further approval as long as the inmate is participating in the program, unless the award is disallowed.

§ 523.13 Community treatment center good time.

Extra good time for an inmate in a Federal or contract Community Treatment Center is awarded automatically, beginning on arrival at the facility and continuing as long as the inmate is confined at the Center, unless the award is disallowed.

§ 523.14 Industrial good time.

Extra good time for an inmate employed in Federal Prison Industries, Inc., is automatically awarded, beginning on the first day of such employment, and continuing as long as the inmate is employed by Federal Prison Industries, unless the award is disallowed. An inmate on a waiting list for employment in Federal Prison Industries is not awarded industrial good time until actually employed.

§ 523.15 Camp or farm good time.

An inmate assigned to a farm or camp is automatically awarded extra good time, beginning on the date of commitment to the camp or farm, and continuing as long as the inmate is assigned to the farm or camp, unless the award is disallowed.

§ 523.16 Lump sum awards.

(a) Any staff member may recommend, to the Warden, the approval of an inmate for a lump sum award of extra good time. Such recommendations must be for an exceptional act or service that is not a part of a regularly assigned duty. The Warden may make lump sum awards of extra good time not to exceed thirty days. If the recommendation is for an award in excess of thirty days and the Warden concurs, the Warden shall refer the recommendation to the Regional Director who may approve the award. No award may be approved which would exceed the maximum number of days allowed under 18 U.S.C. 4162. The actual length of time served on the sentence, including jail time, to the date that the exceptional act or service terminated is the basis on which the maximum amount possible to award is calculated, less any extra good time previously earned. No seniority is accrued for such awards. Staff may recommend lump sum awards of extra good time for the following reasons:

(1) An act of heroism;

(2) Voluntary acceptance and satisfactory performance of an unusually hazardous assignment;

(3) An act which protects the lives of staff or inmates or the property of the United States; this is to be an act and not merely the providing of information in custodial or security matters;

(4) A suggestion which results in substantial improvement of a program or operation, or which results in significant savings; or

(5) Any other exceptional or outstanding service.

§ 523.17 Procedures.

(a) Extra good time is awarded at a rate of three days per month during the first twelve months of seniority in an earning status and at the rate of five days per month thereafter. The first twelve months of seniority need not be based on a continuous period of twelve months. If the beginning or termination date of an extra good time award occurs after the first day of a month, a partial award of days is made.

(b) An inmate may be awarded extra good time even though some or all of the inmate's statutory good time has been forfeited or withheld.

(c) Parole violators may earn extra good time the same as other inmates; any extra good time or seniority earned on the initial portion of the sentence is not carried over to the violator term.

(d) Staff working in the community have the same extra good time authority as the Warden when approving the award of good time for an inmate confined in a nonfederal facility and may approve meritorious good time or lump sum awards in accordance with this rule upon recommendations made by a responsible person employed by the nonfederal facility. The appropriate staff in the Regional Office may review all such awards if the Regional Director requires the review.

(e) An inmate who is transferred remains in the earning status at time of transfer, unless the reason for transfer would otherwise have caused removal from an earning status and provided the inmate's behavior is such while in transit that it does not justify removal. Where the receiving institution is a camp, farm, or community treatment center, the extra good time continues automatically upon the inmate's arrival. Where the receiving institution is other than a camp, farm, or community treatment center, the extra good time is terminated upon arrival, and staff at the receiving institution shall review each case to determine if the inmate should continue in meritorious good time earning status if not immediately employed in Federal Prison Industries or assigned to a work/study release program. If the inmate then is not continued in meritorious good time earning status, later awards must comply with procedures outlined in § 523.11.

(f) An inmate serving a life sentence may earn extra good time even though there is no mandatory release date from which to deduct the credit since the possibility exists that the sentence may be reduced or commuted to a definite term.

(g) Extra good time is not automatically discontinued while an inmate is hospitalized, on furlough, out of the institution on a writ of habeas corpus, or removed under the Interstate Agreement on Detainers. Extra good time may be terminated or disallowed during such absences if the Warden or the Institution Discipline Committee finds that the inmate's behavior warrants such action.

(h) Extra good time earned by an inmate in a District of Columbia Department of Corrections facility is treated the same as if earned in a Bureau of Prisons institution, upon transfer to a Bureau institution.

(i) An inmate committed under the provisions of 18 U.S.C. 3651 (split sentence) may earn extra good time credits provided the sentence imposed is not under the provisions of 18 U.S.C. 5010 (b) or (c) (YCA). All extra good time and seniority earned is carried over to any subsequent probation violator sentence based on the original split sentence.

(j) An inmate committed under the provisions of 18 U.S.C. 4205(c) may earn extra good time credits towards the final sentence that may be imposed. Such extra good time credits do not reduce the three months allowed for study.

(k) Inmates committed under the provisions of 18 U.S.C. 4244, 4246-47, 4252, 5010 (b), (c), (e), or 5037(c) are not entitled to extra good time deductions.

(l) An unsentenced inmate is not entitled to extra good time deductions.

(m) An inmate committed for civil contempt is not entitled to extra good time deductions while serving the civil contempt sentence.

(n) A military or Coast Guard inmate may earn extra good time. Extra good time earned in Federal Prison Industries in a military or Coast Guard installation is treated the same as if earned in Federal Prison Industries in the Bureau of Prisons. Other forms of military or Coast Guard extra good time, such as Army Abatement time, are fully credited, but no seniority is allowed.

(o) American citizens who are serving sentences in foreign countries and who are subsequently returned to this country under the provisions of 18 U.S.C. Chapter 306 (Pub. L. 95-144) may have earned work, labor, or program time credits in the foreign country similar to extra good time earned under 18 U.S.C. 4162. Such foreign "extra good time" credits shall be treated as if awarded under § 523.16, Lump Sum Awards, with any future lump sum award consideration in this country calculated on the basis of time served in custody of the Bureau of Prisons. After return to this country an inmate may earn extra good time at the three-day rate and advance to the five-day rate after one year of seniority is accrued. No seniority is accrued for foreign "extra good time" credits.

(p) An inmate in an extra good time earning status may not waive or refuse extra good time credits.

(q) Once extra good time is awarded, it becomes vested and may not be forfeited or withheld or retroactively terminated or disallowed.

PART 524—CLASSIFICATION OF INMATES

Subpart A—[Reserved]

Subpart B—Classification and Program Review of Inmates

Sec.

524.10 Purpose and scope.
524.11 Classification team.
524.12 Procedures for initial classification.
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524.14 Unscheduled reviews.
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524.16 Study and observation cases.

Subparts C-E—[Reserved]

Subpart F—Central Inmate Monitoring System

524.70 Purpose and scope.
524.71 Responsibility.
524.72 Central inmate monitoring assignments.
524.73 Procedures.
524.74 Final CIM classifications.
524.75 Interim CIM classifications.
524.76 CIM activities clearance.

Sec.
524.77 Review of CIM status.
524.78 Appeals of central inmate monitoring classification.
524.79 CIM classification of parole/mandatory release violators.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039; 28 U.S.C. 509, 510; Title V, Pub. L. 91-452, 84 Stat. 933 (18 U.S.C., Chapter 223); 28 CFR 0.95-0.99.

SOURCE: 45 FR 83921, Dec. 19, 1980, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Classification and Program Review of Inmates

SOURCE: 46 FR 24899, May 1, 1981, unless otherwise noted.

§ 524.10 Purpose and scope.

It is the policy of the Bureau of Prisons to classify each newly committed inmate within four weeks of the inmate's arrival at the institution designated for service of sentence. Subsequent program reviews for each inmate shall be conducted at regular intervals. The Warden shall establish procedures to ensure that a newly committed inmate is promptly assigned to a classification team.

§ 524.11 Classification team.

The Warden shall ensure that each department within the institution has the opportunity to contribute to the classification process.

(a) At a minimum, each classification team shall include the unit manager, a case manager, correctional counselor, and education representative. Where the institution does not have unit management, the classification team shall include a case manager, correctional counselor, and education representative.

(b) Each member of the classification team shall individually interview the newly arrived inmate within five working days of the inmate's assignment to that team.

§ 524.12 Procedures for initial classification.

(a) The Warden or designee shall ensure that each newly committed inmate is scheduled for initial classification within four weeks of the inmate's arrival at the designated institution.

(b) Staff shall notify an inmate at least 48 hours prior to that inmate's scheduled appearance before the classification team. An inmate may waive in writing the 48 hours notice requirement. The inmate is expected to attend the initial classification meeting. If the inmate refuses to appear, staff shall document in the record of the meeting the inmate's refusal and, if known, the reasons for refusal.

(c) Staff shall prepare a classification packet on each inmate scheduled to appear before the classification team. This packet ordinarily shall include information on the apparent needs of the inmate, and shall offer a correctional program designed to meet those needs. With the exception of a work assignment, and as provided in Part 544, Subpart H (Optional Programming), the inmate may choose not to participate in the offered program.

(d) Staff shall complete a program review report at the inmate's initial classification. The inmate is to be provided and sign for a copy of this report. If the inmate refuses to sign for a copy of this report, staff witnessing the refusal shall place a signed statement to this effect on the report. Staff shall place a copy of the program review report in the inmate's central file.

(e) Within five working days of the initial classification meeting, staff shall prepare a staff summary, discussing those facts which were available at the time of the initial classification. The staff summary is to include information on the inmate's current offense and prior record, social situation, recommended programs, and community resources. A copy of the staff summary is provided to the inmate, upon the inmate's request.

§ 524.13 Program reviews.

(a) Staff shall conduct a program review for each inmate:

(1) In Security Levels 1, 2, and 3 institutions at least once every 90 days; and

(2) In Security Levels 4, 5, and 6 and administrative institutions at least once every 180 days. When an inmate in a Security Level 4, 5, 6 or administrative institution is within 2 years of an anticipated release date, a program review shall be conducted at least once every 90 days. An anticipated release date, for purpose of this rule, refers to the first of the following dates:

(i) The inmate's mandatory (statutory) release date;

(ii) The inmate's minimum expiration date;

(iii) The inmate's presumptive parole date;

(iv) The inmate's effective parole date; or

(v) In the absence of a presumptive or effective parole date, the top of the range of months to be served for the inmate's specific offense and salient factor score, using U.S. Parole Commission guidelines.

(b) Staff shall prepare a program review report to document each program review. The inmate is to sign for and receive a copy of this report. If the inmate refuses to sign for a copy of this report, staff witnessing the refusal shall place a signed statement to this effect on the report.

(c) Staff shall notify an inmate of the scheduled program review at least 48 hours prior to a staff originated meeting. An inmate may waive in writing the 48 hours notice requirement. An inmate may elect not to attend the program review. If this occurs, staff shall indicate the refusal and, if known, the reasons for refusal on the program review report. An inmate who elects not to appear for a program review is to be provided, and is to sign for, a copy of the program review report. If the inmate refuses to sign for a copy of this report, staff witnessing the refusal shall place a signed statement to this effect on the report.

§ 524.14 Unscheduled reviews.

Staff may establish a schedule to ensure that inmates are provided program reviews as required by this rule. Upon request of either the inmate or staff, and with the concurrence of the team chairperson, an advanced or previously unscheduled program review may occur.

§ 524.15 Appeals procedure.

An inmate may appeal, through use of the Administrative Remedy Procedure, a decision made at initial classification or at a program review.

§ 524.16 Study and observation cases.

Inmates committed to the custody of the U.S. Attorney General for purposes of study and observation are excluded from the provisions of this rule.

Subparts C–E—[Reserved]

Subpart F—Central Inmate Monitoring System

SOURCE: 47 FR 22002, May 20, 1982, unless otherwise noted.

§ 524.70 Purpose and scope.

The Bureau of Prisons monitors and controls the transfer, temporary release (e.g., on writs), and community activities of certain inmates who present special needs for management. Such inmates, known as central inmate monitoring (CIM) cases, require Central Office and/or Regional Office approval for transfers, temporary releases, or community activities recommended by the Warden. This monitoring is not for the purpose of precluding inmates classified as central inmate monitoring cases from transfers, from temporary releases, or from participation in community activities, when the inmate is otherwise eligible, but rather is to provide protection for all concerned and to contribute to the safe and orderly running of Federal institutions.

§ 524.71 Responsibility.

Authority for actions relative to the Central Inmate Monitoring Network is delegated to the Assistant Director, Correctional Programs Division, to Regional Directors, and to Wardens. Each of these persons shall designate a CIM coordinator (for the Central Office, each Regional Office, and each institution, respectively). Community Programs Managers are designated CIM coordinators for inmates confined at contract facilities.

§ 524.72 Central inmate monitoring assignments.

Central inmate monitoring cases are classfied according to the following assignments.

(a) *Witness Security Cases:* Inmates who are identified by the Department of Justice as witness security cases. This assignment includes persons whose safety is in jeopardy because of their cooperation with the government. Placement in this assignment may be made only upon authorization of the Office of Enforcement Operations, Criminal Division, Department of Justice.

(b) *Sophisticated Criminal Activity:* Inmates who have been involved in sophisticated criminal activity. A RICO conviction (Racketeer Influenced and Corrupt Organizations—18 U.S.C. 1961-1968) or a Continuing Criminal Enterprise conviction (21 U.S.C. 848) will automatically result in a classification to this assignment. An elected or appointed public official at a local, county, state, or federal level who violated the trust of that position as evidenced by conviction for a felony offense will automatically be classified "sophisticated criminal activity." Other examples of sophisticated criminal activity include drug offenses, property offenses, white collar offenses, or a criminal history of involvement in such offenses. An inmate may be classified to this assignment when all the following minimum criteria are met:

(1) The offense was planned and organized and involved criminal activity that geographically operated on a municipal, county, state, national, or international scale;

(2) The offender occupied a position of organizer, a supervisory position, or any other position of managment for the criminal organization or activity from which substantial income or resources could be obtained; and

(3) The monetary value of the offense totaled $500,000 or more for drug offenses, and $250,000 or more for property offenses or white collar offenses.

(c) *Threats to Government Officials:* Inmates who have made threats to government officials or have been identified in writing by the U.S. Secret Service as requiring special surveillance.

(d) *Broad Publicity:* Inmates who have received widespread publicity (for example, national media coverage or continued news coverage by the local media) as the result of their criminal activity.

(e) *Disruptive Groups:* Inmates who belong to or are closely associated with disruptive groups (e.g., prison gangs), which have a history of disrupting institution operations and security in either state or federal penal facilities. This assignment also includes those persons who may not be confined in the same institution with specified disruptive group members.

(f) *State Prisoners:* Inmates, other than witness security cases, who have been accepted into the Bureau of Prisons for service of their state sentences. This assignment includes cooperating state witnesses, contractual boarders, and court-ordered federal placements of state prisoners.

(g) *Special Supervision:* Inmates who require monitoring for their protection from *unknown* inmates who are identified only by geographic location, i.e., institution, region, or correctional system. This assignment may include persons (for example, former criminal justice personnel) who may be subject to indiscriminate retaliation from individuals who cannot be identified. This assignment may also include those persons, other than witness security cases, whose safety is in jeopardy because of their cooperation with the government. Placement in this assignment because the inmate cooperated with the government may be made only upon authorization of the Assistant Director, Correctional Programs Division.

(h) *Separation:* Inmates who may not be confined in the same facility with other specified individuals regardless of their location. This includes federal inmates boarded in state facilities for separation and protection purposes, and those who may come into federal custody in the future. Factors to consider in classifying an individual to this assignment include, but are not limited to, testimony provided by or about an individual (in open court, to a grand jury, etc.), and whether the inmate has exhibited aggressive behavior towards other specific individuals either in the community or within the institution. This assignment also includes those inmates who have provided authorities with information concerning the unauthorized or illegal activities of others and those inmates who may be affected by any other event or circumstance which could result in a physical confrontation between at least two persons or which could jeopardize the orderly operation of the institution.

§ 524.73 Procedures.

Staff shall use the following procedures in making central inmate monitoring classifications:

(a) An inmate may be classified at any time as a central inmate monitoring case by a Community Programs Manager or by appropriate staff at the Central Office, Regional Office, or institution. This classification takes effect when proper notifications are made to authorities at the institution where the inmate is confined or is designated for confinement.

(b) The institution's CIM coordinator shall ensure that the affected inmate is notified in writing as promptly as possible of the classification and the basis for it. The notice of the basis may be limited in the interest of security or safety. For example, in separation cases under § 524.72, notice will not include the names of those from the inmate must be separated. On the other hand, in sophisticated criminal activity cases under § 524.72, adequate notice shall include specific reference to the sophisticated criminal activity, that is, the crime or crimes for which the inmate was convicted, or explicit and reliable information of other sophisticated criminal activity. The inmate shall sign for and receive a copy of the notification form, with the original form placed in the inmate privacy folder. If the inmate refuses to sign the notification form, staff witnessing the refusal shall indicate this fact on the notification form and then sign the form.

(c) When an inmate's name is ordered removed for any reason from the Central Inmate Monitoring System (for example, because the reviewing authority either disapproves the interim CIM classification or approves removal of a final CIM classification based on new information), the CIM coordinator shall ensure that the relevant portions of the inmate central fiie are either removed or, when part of a larger document, are amended to clearly reflect removal of the CIM assignment. The form providing for notification of the central inmate monitoring classification, the summary sheet, supportive documentation, and the written basis for removal are to be retained in the inmate privacy file.

Staff shall notify the inmate in writing of the removal of a specific CIM classification. The inmate shall sign for and receive a copy of this notification form, with the original placed in the inmate privacy folder. If the inmate refuses to sign the notification form, staff witnessing the refusal shall indicate this refusal on the notification form and then sign the form.

§ 524.74 Final CIM classifications.

A final CIM classification may be made where the basis for the classification is well established at the time of the initial review. The inmate is to be notified of the CIM classification and of the right to appeal the classification through the Administrative Remedy Procedure.

(a) Witness security cases are designated by the Central Office. An inmate's participation in this program is voluntary. A pre-commitment interview and an admission and orientation interview are to be conducted with the witness security inmate to ensure that the inmate understands the conditions of confinement within the Bureau of Prisons. Central Office classification of an individual as a witness security case does not require additional review. Classification of an inmate as a witness security case overrides any other CIM assignment.

(b) State prisoners accepted into the Bureau of Prisons from state or territorial jurisdictions are designated by appropriate staff in the Central Office or Regional Office. All state prisoners are automatically included in the Central Inmate Monitoring System to facilitate designations, transfers, court appearances, and other movements. Central Office or Regional Office classification of an individual as a state prisoner does not require additional review.

(c) Designated staff in the Central Office or Regional Office may assign an inmate to any other CIM classification which they are authorized to make, without an interim classification, based upon substantive information at staff disposal. Staff in the Central Office or Regional Office shall notify the appropriate institutional CIM coordinator of the final classification.

§ 524.75 Interim CIM classifications.

(a) An interim classification, ordinarily not to exceed 60 days, may be made at any level to achieve the immediate effect of requiring prior clearance for an inmate's transfer, temporary release, or participation in community activities. An interim classification is appropriate when additional review is required to determine whether a sound basis exists for the classification. Reviewing authorities for interim CIM classifications are:

(1) Designated staff in the Central Office Inmate Monitoring Branch who reviews interim CIM classification decisions for all future separation assignments and for any combination of assignments involving a witness security case;

(2) The Warden who reviews interim CIM classification decisions for all separation assignments other than future separation; and

(3) Designated staff in the Regional Office who reviews interim CIM classification decisions for all other central inmate monitoring assignments and for any combination of assignments, except for those involving a witness security case.

(b) The inmate is to be notified of the interim CIM classification. The inmate is to be advised that any objections to the interim CIM classification may be submitted by the inmate directly to the reviewing authority. If the inmate is not notified of a change in the interim CIM classification within 60 days from the date of initial notification, the inmate may consider the CIM classification a final decision. After a final decision is reached on an inmate's CIM status, the Administrative Remedy Procedure may be used more effectively since a completed action (final CIM decision) exists.

(c) The Warden shall forward to the reviewing authority complete information regarding the inmate's interim CIM classification.

(d) The reviewing authority shall make a final decision on the appropriateness of the CIM classification, ordinarily within 60 days of the date the inmate was initially notified of the interim classification. The reviewing authority shall notify the institution's CIM coordinator in writing of the final decision.

§ 524.76 CIM activities clearance.

(a) An inmate classified as a central inmate monitoring case may not be transferred (except for medical emergencies), may not be given a temporary release, and may not participate in community activities without prior approval from the appropriate authority.

(b) Clearance by the Central Office or Regional Office (depending upon CIM classification) is required prior to the inmate's participation in the following activities:

(1) Transfer to another Federal facility;

(2) Transfer to non-Federal facilities or contract community treatment centers (for continued service of federal sentence);

(3) Temporary release (e.g., on writs) to federal, state, and/or local jurisdictions;

(4) Furloughs;

(5) Escorted trips outside commuting distance of the institution; and

(6) Work or Study Release.

(c) Except as provided in the following paragraphs of this section, the Regional Director or designee shall be the clearance authority on all transfers, temporary releases, and participation in community activities for inmates assigned central inmate monitoring status.

(d) The Central Office Inmate Monitoring Branch shall be the clearance authority on all transfers, temporary releases, and participation in community activities for witness security cases.

(e) The Warden may approve the transfer of a CIM inmate (other than a witness security case) to the satellite camp of the Warden's institution.

(f) The Warden may approve non-medical escorted trips within the local community for separation cases. Witness security cases are to be cleared through the Central Office. All other CIM assignments are to be cleared through the appropriate Regional Office.

(g) The Warden may approve the transfer of a CIM inmate to a local hospital for emergency medical care not available at the institution.

(h) The Warden may approve local escorted medical trips for all CIM assignments except witness security cases. The Warden may approve only emergency local escorted medical trips for witness security cases.

(i) Except as provided in paragraphs (e) through (h) of this section, the Central Office Inmate Monitoring Branch will clear all community activities for inmates in the following assignments: witness security, sophisticated criminal activity, broad publicity, and threats to government officials. Except for witness security cases, final clearance from the Central Office shall be requested only if the activity is first reviewed and recommended by the Regional Director or designee. Requests for community activities for witness security cases are to be submitted directly by the institution to the Central Office Inmate Monitoring Branch.

§ 524.77 Review of CIM status.

(a) Except for witness security and state prisoner assignments, the Warden shall ensure that the status of an inmate's CIM assignment is considered at each program review in respect to any new information, or change in behavior or status which might affect the inmate's central inmate monitoring classification. When staff believes that removal or modification of a CIM classification is appropriate, the institution's CIM coordinator and the appropriate reviewing authority are to be notified. Only the reviewing authority shall determine if removal or modification of the CIM classification is appropriate. The institution's CIM coordinator shall ensure that the inmate is notified of any decision made by the reviewing authority.

(b) Participation of an inmate in the witness security program is voluntary. An inmate classified as a witness security case may request removal from this assignment at any time.

Staff shall forward to the Central Office Inmate Monitoring Branch a request by a witness security inmate for removal from the witness security program. An inmate may not be removed from the CIM assignment as a witness security case without the acknowledgement of the Department of Justice, Office of Enforcement Operations.

(c) A state prisoner accepted into the Bureau of Prisons from a state or territorial jurisdiction shall keep the CIM assignment "state prisoner" while solely in service of the state sentence.

§ 524.78 Appeals of central inmate monitoring classification.

An inmate may at any time appeal (through the Administrative Remedy Procedure) the inmate's classification as a central monitoring case. While this means that an inmate may appeal an interim classification through the Administrative Remedy Procedure, staff shall advise the inmate that any objections to an interim CIM classification are more appropriately submitted to the reviewing authority because it is the reviewing authority who makes the final decision on an inmate's CIM assignment. After a final decision is reached on an inmate's CIM status, the Administrative Remedy Procedure may be used more effectively since a completed action (final CIM decision) exists.

Federal inmates housed in non-federal facilities do not have access to the Administrative Remedy Procedure. Inmates in this status who wish to appeal their CIM status may forward their complaints by private correspondence to the appropriate Regional Office.

§ 524.79 CIM classification of parole/mandatory release violators.

An inmate who is recommitted to federal custody because of a parole/mandatory release violation, or a new conviction, and who, at the time of release was classified as a CIM case shall retain this classification pending a review of the CIM status by appropriate staff. Except for witness security cases, this review ordinarily is completed as a part of the unit classification process. Review for witness security cases is completed by the Inmate Monitoring Branch at the time that an institution is designated for recommitment.

(a) When staff determines that the inmate's removal as a CIM case is appropriate, staff shall forward its recommendation, and the justification for this recommendation to the appropriate reviewing authority for a final decision on removal of the CIM classification. The inmate retains the CIM classification pending a decision by the reviewing authority.

(b) When staff determines that a modification (addition or deletion of one or more CIM assignments) of the CIM classification is appropriate, staff shall forward its recommendation, and the justification for this recommendation to the appropriate reviewing authority for a final decision on modification of the CIM classification. The inmate retains the existing CIM classification pending a decision by the reviewing authority.

(c) When removal from, modification of, or continuation as a CIM case is indicated, or when an interim classification is effected, the institution's CIM coordinator shall ensure that the inmate is provided notification of the initial action. The institution CIM coordinator shall also ensure that an inmate is provided notification of any subsequent decision by the reviewing authority to either modify or remove the inmate's CIM assignment.

PART 527—TRANSFERS

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Subpart A—[Reserved]

Subpart B—Military and Coast Guard Inmates

§ 527.10 Purpose and scope.

(a) The Bureau of Prisons will accept a military or Coast Guard inmate recommended for transfer to an institution if, after examination of all available information, the Bureau of Prisons can provide appropriate resources for the inmate's needs.

(b) Military or Coast Guard inmates confined in Bureau of Prisons institutions are subject to the same discipline and treatment as other inmates in those institutions (See 10 U.S.C. 858).

(c) The Bureau of Prisons will accept the sentence computation so provided by the military or Coast Guard authorities with the exception that the Bureau of Prisons shall release such inmates, if not paroled, under the provisions of 18 U.S.C. 4164 provided they have accrued good time deductions in excess of 180 days. Staff shall refer to the appropriate military or Coast Guard authorities for resolution suspected sentence computation errors or discrepancies, or challenges to the sentence computation by the inmate or his representative or both.

(d) Military and Coast Guard inmates are eligible for clemency consideration and the Bureau of Prisons will honor such clemency actions as issued by military or Coast Guard authorities.

(10 U.S.C. 858; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 4201–4218, 28 U.S.C. 509; 28 CFR 0.95–0.99)

[44 FR 38247, June 29, 1979]

Subpart C—Transfer of Inmates After Conviction

§ 527.20 Policy.

The Bureau of Prisons adheres to Rule 38(a)(2) of the Federal Rules of Criminal Procedure. When the court of conviction recommends that the inmate be retained in a place of confinement which will allow the inmate to participate in the preparation of the appeal, the Bureau of Prisons shall make every effort to place the inmate in such a facility, unless a reason exists for not placing the inmate in that facility, in which case the matter is called to the attention of the court and an attempt is made to arrive at an acceptable place of confinement.

(5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.)

[45 FR 23365, Apr. 4, 1980]

Subpart D—Transfer of Inmates to State Agents for Production on State Writs

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Source: 46 FR 34549, July 1, 1981, unless otherwise noted.

§ 527.30 Purpose and scope.

The Bureau of Prisons will consider a request made on behalf of a state or local court that an inmate be transferred to the physical custody of state or local agents pursuant to state writ of habeas corpus *ad prosequendum* or *ad testificandum*. The Warden at the institution in which the inmate is confined is authorized to approve this transfer, in accordance with the provisions of this rule.

§ 527.31 Procedures.

(a) These procedures apply to state and federal inmates serving sentences in federal institutions, and shall be followed prior to an inmate's transfer to state or local agents other than through the Interstate Agreement on Detainers. The provisions of this rule may not be used to avoid the use, or to circumvent the intent, of the Interstate Agreement on Detainers.

(b) The Warden shall authorize transfer only when satisfied that the inmate's appearance is necessary, that state or local arrangements are satisfactory, that the safety or other interests of the inmate (such as an imminent parole hearing) are not seriously jeopardized, and that federal interests will not be interfered with, or harmed. Authorization may not be given where substantial concern exists over any of these considerations.

(c) The request for transfer of custody to state agents shall be made by the prosecutor or other authority who acts on behalf of the court and shall be directed to the Warden of the institution in which the inmate is confined. The request may be made by letter, or in urgent cases by wire or phone. The request shall indicate the need for appearance of the inmate, name of the court, nature of the action, date of the requested appearance, name and phone number of the state agency or other organization with responsibility for transporting the inmate, the name and location where the inmate will be confined during legal proceedings, and anticipated date of return. For civil cases, the request shall also indicate the reason that production on writ is necessary and some other alternative is not available. The applying authority shall provide either at the time of application or with the agent assuming custody, a statement signed by an authorized official that state or local officials with custody will provide for the safekeeping, custody, and care of the inmate, will assume full responsibility for that custody, and will return the inmate to Bureau of Prisons' custody promptly on conclusion of the inmate's appearance in the state or local proceedings for which the writ is issued.

(d) A certified copy of the writ (one with the Seal of the Court) must be received at the institution prior to release of the inmate. Institutional staff shall verify the authenticity of the writ.

(e) Institution staff shall maintain contact with the state or local law enforcement agency with responsibility for transfer of the inmate to determine the exact date and time for transfer of custody. If the inmate is awaiting federal trial or has federal civil proceedings pending, staff must clear the transfer through the U.S. Attorney.

(f) Institution staff shall determine from the state or local agency the names of the agents assuming custody. Staff must carefully examine the credentials of the agents assuming custody. In any doubtful case, verification should be sought.

(g) Transfers in civil cases pursuant to a writ of habeas corpus *ad testificandum* must be cleared through the Warden or designee, who ordinarily shall recommend transfer only if the case is substantial, where testimony cannot be obtained through alternative means such as depositions or interrogatories, and where security arrangements permit. Postponement of the production until after the inmate's release from federal custody will always be considered, particularly if release is within six months.

(h) Release of inmates classified as Central Inmate Monitoring Cases requires review and/or coordination by appropriate authorities in either the Regional or Central Office, in accordance with the provisions of Part 524, Subpart F.

Subpart E—Transfer of Offenders to or From Foreign Countries

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4100-4115, 4161-4166, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

SOURCE: 46 FR 59507, Dec. 4, 1981, unless otherwise noted.

§ 527.40 Purpose and scope.

Public Law 95-144 (18 U.S.C. 4100 et seq.) authorizes the transfer of offenders to or from foreign countries, pursuant to the conditions of a current treaty which provides for such transfer. 18 U.S.C. 4102 authorizes the Attorney General to act on behalf of the United States in regard to such treaties. In accordance with the provisions of 28 CFR 0.96b the Attorney General has delegated to the Director of the Bureau of Prisons, and to designees of the Director, the authority to receive custody of, and to transfer to and from the United States, offenders in compliance with the conditions of the treaty.

§ 527.41 Definitions.

For purpose of this rule the following definitions apply.

(a) *Treaty nation.* A country which has entered into a treaty with the United States on the Execution of Penal Sentences.

(b) *State prisoner.* An inmate serving a sentence imposed in a court in one of the states of the United States, or in a territory or commonwealth of the United States.

(c) *Departure institution.* The Bureau of Prisons institution to which an eligible inmate is finally transferred for return to his or her country of citizenship.

(d) *Admission institution.* The Bureau of Prisons institution where a United States citizen-inmate is first received from a treaty nation.

§ 527.42 Notification of Bureau of Prisons inmates.

(a) The Warden shall ensure that the institution's admission and orientation program includes information on international offender transfers.

(b) The case manager of an inmate who is a citizen of a treaty nation shall inform the inmate of the treaty and provide the inmate with an opportunity to inquire about transfer to the country of citizenship. The inmate is to be given an opportunity to indicate on an appropriate form whether he or she is interested in transfer to the country of citizenship.

§ 527.43 Transfer of Bureau of Prisons inmates to other countries.

(a) An inmate who is qualified for and desires to return to his or her country of citizenship for service of a sentence imposed in a United States Court shall indicate his or her interest by completing and signing the appropriate form and forwarding it to the Warden at the institution where the inmate is confined.

(b) Upon verifying that the inmate is qualified for transfer, the Warden shall forward all relevant information, including a complete classification package, to the Assistant Director, Correctional Programs Division.

(c) The Assistant Director, Correctional Programs Division shall review the submitted material and forward it to the Office of International Affairs (OIA), Criminal Division, Department of Justice, for review.

(d) The Assistant Director, Correctional Programs Division shall ensure that the inmate is advised of the decision of OIA.

(1) When the Department of Justice determines that transfer is not appropriate, the Assistant Director, Correctional Programs Division shall ensure that the inmate is advised of this determination and informed that the inmate may request the reason(s) for such action from OIA.

(2) When the Department of Justice determines that transfer is appropriate, the Assistant Director, Correctional Programs Division shall ensure that the inmate is advised of the determination and of the probability that the inmate will be given an interview with his or her nation's consular officials.

(e) Upon notification from OIA of the treaty nation's decision in regard to the inmate's transfer, the Assistant Director, Correctional Programs Division shall arrange for the inmate to be informed of that decision.

(f) At an appropriate time subsequent to notification by the Department of Justice of an inmate's approval for transfer, the Assistant Director shall arrange for the inmate to be transferred to an appropriate departure institution.

(g) Prior to the inmate's transfer from the departure institution, the inmate shall receive a verification hearing before a U.S. Magistrate or U.S. Judge or other appointed U.S. official to document the inmate's voluntary consent for transfer. Counsel is provided the inmate for purpose of this hearing. Where requested, the Warden shall allow counsel to interview the inmate prior to the hearing.

(h) Following the verification hearing, the Assistant Director, Correctional Programs Division shall arrange a schedule for delivery of the inmate to the authorities of the country of citizenship.

(1) The Assistant Director shall advise the Warden of those arrangements.

(2) The Warden shall arrange for the inmate to be transported to the foreign authorities. The Warden shall assure that required documentation (for example, a certified copy of the judgment and commitment order, current progress report, summary face sheet, and proof of citizenship) accompanies each inmate transported.

§ 527.44 Transfer of state prisoners to other countries.

The Bureau of Prisons may assume custody of a state prisoner who has been approved for transfer to a treaty nation for the purpose of facilitating the transfer to the treaty nation. Once approved, the state is not required to contract for the placement of the prisoner in federal custody, nor to reimburse the United States for the cost of confinement (as would ordinarily be required by 18 U.S.C. 5003).

§ 527.45 Receiving United States citizens from other countries.

(a) Staff accepting custody of American inmates from a foreign authority shall ensure that the following documentation is available prior to accepting custody of the inmate:

(1) A certified copy of the sentence handed down by an appropriate, competent judicial authority of the transferring country and any modifications thereof;

(2) A statement (and a copy translated into English from the language of

the country of origin if other than English), duly authenticated, detailing the offense for which the offender was convicted, the duration of the sentence, and the length of time already served by the inmate. Included should be statements of credits to which the offender is entitled, such as work done, good behavior, pre-trial confinement, etc.; and

(3) Citizenship papers necessary for the inmate to enter the United States.

(b) The Warden shall direct in writing specific staff, preferably staff who speak the language of the treaty nation, to transport the offender from the transporting country to the admission institution. The directive shall cite 28 CFR 0.96b as the authority to transport the offender. When the admission institution is not able to accept the inmate (for example, a female inmate transported to a male institution), the Warden shall make appropriate housing arrangements with a nearby jail.

(c) As soon as practicable after the inmate's arrival at the admission institution, staff shall initiate the following actions:

(1) Arrange for the inmate to receive a complete physical examination;

(2) Advise the local U.S. Probation Office of the inmate's arrival; and

(3) Notify the U.S. Parole Commission of the inmate's arrival. Inmates returning from other countries are by law immediately eligible for parole. Staff at the admission institution shall determine if each inmate received at that institution should be retained at the admission institution for the initial parole hearing or promptly transferred to a more appropriate institution.

(d) If upon computation of sentence staff determine that an inmate is entitled to immediate release via mandatory release or expiration of sentence with credits applied, release procedures shall be implemented but only after receiving a medical clearance and the results of an FBI fingerprint check.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

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AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart A—General

§ 540.2 Definitions.

(a) "General Correspondence" means incoming or outgoing correspondence other than "special mail". "General Correspondence" includes packages sent through the mail.

(1) "Open General Correspondence" means general correspondence which is not limited to a list of authorized correspondents, except as provided in § 540.16.

(2) "Restricted General Correspondence" means general correspondence which is limited to a list of authorized correspondents.

(b) "Representatives of the News Media" means persons whose principal employment is to gather or report news for:

(1) A newspaper which qualifies as a general circulation newspaper in the community in which it is published. A newspaper is one of "general circulation" if it circulates among the general public and if it publishes news of a general character of general interest to the public such as news of political, religious, commercial, or social affairs. A key test to determine whether a newspaper qualifies as a "general circulation" newspaper is to determine whether the paper qualifies for the purpose of publishing legal notices in the community in which it is located or the area to which it distributes;

(2) A news magazine which has a national circulation and is sold by newsstands and by mail subscription to the general public;

(3) A national or international news service; or

(4) A radio or television news program of a station holding a Federal Communications Commission license.

(c) "Special Mail" means correspondence *sent* to the following: President and Vice President of the U.S., the U.S. Department of Justice (including the Bureau of Prisons), U.S. Attorneys Offices, Surgeon General, U.S. Public Health Service, Secretary of the Army, Navy, or Air Force, U.S. Courts including U.S. Probation Officers, Members of the U.S. Congress, Embassies and Consulates, Governors, State Attorneys General, Prosecuting Attorneys, Directors of State Departments of Corrections, State Parole Commissioners, State Legislators, State Courts, State Probation Officers, other Federal and State law enforcement offices, attorneys, and representatives of the news media.

"Special Mail" also includes correspondence *received* from the following: President and Vice President of the U.S., attorneys, Members of the U.S. Congress, Embassies and Consulates, the U.S. Department of Justice (excluding the Bureau of Prisons but including U.S. Attorneys), other Federal law enforcement officers, State Attorneys General, Prosecuting Attorneys, Governors, U.S. Courts, and State Courts.

[45 FR 44229, June 30, 1980]

Subpart B—Correspondence

SOURCE: 45 FR 44229, June 30, 1980, unless otherwise noted.

§ 540.10 Purpose and scope.

The Bureau of Prisons encourages correspondence that is directed to socially useful goals. The Warden shall establish correspondence procedures for inmates in each institution, as authorized and suggested in this rule. Regulations contained in this subpart supplement regulations generally applicable to mail, issued by the United States Postal Service (See 39 CFR, Chapter I).

§ 540.11 Controls and procedures.

(a) The Warden shall establish and exercise controls to protect individuals, and the security, discipline, and good order of the institution. The size, complexity, and security level of the institution, the degree of sophistication of the inmates confined, and other variables require flexibility in correspondence procedures. All Wardens shall establish open general correspondence procedures.

(b) Staff shall inform each inmate in writing promptly after arrival at an institution of that institution's rules for handling of inmate mail. This notice includes the following statement:

> The staff of each institution of the Bureau of Prisons has the authority to open all mail addressed to you before it is delivered to you. "Special Mail" (mail from the President and Vice President of the U.S., attorneys, Members of the U.S. Congress, Embassies and Consulates, the U.S. Department of Justice (excluding the Bureau of Prisons but including U.S. Attorneys), other Federal law enforcement officers, State Attorneys General, Prosecuting Attorneys, Governors, U.S. Courts, and State Courts) may be opened only in your presence to be checked for contraband. This procedure occurs only if the sender adequately identifies himself on the envelope and the envelope is marked "Special Mail—Open only in the presence of the inmate." Other mail may be opened and read by the staff.
>
> If you do not want your *general* correspondence opened and read, the Bureau will return it to the Postal Service. This means that you will not receive such mail. You may choose whether you want your general correspondence delivered to you subject to the above conditions, or returned to the Postal Service. Whatever your choice, special mail will be delivered to you, after it is opened in your presence and checked for contraband. You can make your choice by signing Part I or Part II.
>
> PART I—GENERAL CORRESPONDENCE TO BE RETURNED TO THE POSTAL SERVICE
>
> I have read or had read to me the foregoing notice regarding mail. I do not want my general correspondence opened and read. I REQUEST THAT THE BUREAU OF PRISONS RETURN MY GENERAL CORRESPONDENCE TO THE POSTAL SERVICE. I understand that special mail will be delivered to me, after it is opened in my presence and checked for contraband.
>
> (Name)————————————————
> (Reg. No.) ————————————————

(Date) ————————————

PART II—GENERAL CORRESPONDENCE TO BE OPENED, READ, AND DELIVERED

I have read or had read to me the foregoing notice regarding mail. I WISH TO RECEIVE MY GENERAL CORRESPONDENCE. I understand that the Bureau of Prisons may open and read my general correspondence if I choose to receive same. I also understand that special mail will be delivered to me, after it is opened in my presence and checked for contraband.

(Name)————————————
(Reg. No.) ————————————
(Date) ————————————
Inmate (Name) ——————————
(Reg. No.) ———, refused to sign this form.

He (she) was advised by me that the Bureau of Prisons retains the authority to open and read all general correspondence. The inmate was also advised that his (her) refusal to sign this form will be interpreted as an indication that he (she) wishes to receive general correspondence subject to the above mentioned conditions.

Staff Member's Signature————————
Date ————————————

(c) Staff shall inform an inmate that letters placed in the U.S. Mail are placed there at the request of the inmate and he must assume responsibility for the contents of each letter. Correspondence containing threats, extortion, etc., may result in prosecution for violation of federal laws. When such material is discovered, the inmate may be subject to disciplinary action, the written material may be copied, and all material may be referred to the appropriate law enforcement agency for prosecution.

(d) An inmate shall place his or her name on each outgoing envelope.

§ 540.12 Notification of rejections.

When correspondence is rejected because of content, the Warden shall notify the sender in writing of the rejection and the reasons for the rejection. The Warden shall also give notice that the sender may appeal the rejection. The Warden shall also notify an inmate of the rejection of any letter addressed to him, along with the reasons for the rejection and notify him of the right to appeal the rejection. The Warden shall refer an appeal to an official other than the one who originally disapproved the correspondence. The Warden shall return rejected correspondence to the sender unless the correspondence includes plans for or discussion of commission of a crime or evidence of a crime, in which case there is no need to return the correspondence or give notice of the rejection, and the correspondence should be referred to appropriate law enforcement authorities. Also, contraband need not be returned to the sender.

§ 540.13 General correspondence.

(a) The Warden may not limit the number of incoming letters an inmate may receive unless the number received places an unreasonable burden on the institution.

(b) Institution staff shall open and inspect all incoming general correspondence. Incoming general correspondence may be read as frequently as deemed necessary to maintain security or monitor a particular problem confronting an inmate.

(c) Outgoing mail in Security Level 1, 2, 3, and of pre-trial detainees in all institutions may be sealed by the inmate and is sent out unopened and uninspected. Staff may open an inmate's outgoing general correspondence:

(1) If there is reason to believe it would interfere with the orderly running of the institution, that it would be threatening to the recipient, or that it would facilitate criminal activity;

(2) If the inmate is on a restricted correspondence list; or

(3) If the correspondence is between inmates. (See § 540.16)

(d) Outgoing mail in Security Level 4, 5, and 6 and administrative institutions, except "special mail", may not be sealed by the inmate and may be inspected and read by staff.

(e) The Warden may reject correspondence sent by or to an inmate if it contains any of the following:

(1) Matter which is nonmailable under law or postal regulations;

(2) Information of escape plots, of plans to commit illegal activities, or to violate institution rules;

(3) Direction of an inmate's business (See § 541.11(d), Prohibited Act No.

408). An inmate, unless he is a pretrial detainee, may not direct a business while confined.

This does not, however, prohibit correspondence necessary to enable an inmate to protect property and funds that were legitimately his at the time of commitment. Thus, for example, an inmate may correspond about refinancing a mortgage on his home or sign insurance papers, but he may not operate a mortgage or insurance business while in the institution.

(4) Threats, extortion, obscenity, or gratuitous profanity;

(5) A code; or

(6) Contraband. (See § 500.1. A package received without prior authorization by the Warden is considered to be contraband.)

[45 FR 44229, June 30, 1980, as amended at 47 FR 22006, May 20, 1982]

§ 540.14 Restricted general correspondence.

(a) The Warden may place an inmate on restricted general correspondence based on misconduct or as a matter of classification.

Determining factors include the inmate's:

(1) Involvement in any of the activities listed in § 540.13(e);

(2) Attempting regularly to correspond with persons or businesses where the addressee is known by the inmate only through such sources as advertisements in newspapers, magazines, telephone directories, etc.;

(3) Being a security risk;

(4) Threatening a government official;

(5) Having committed an offense involving the mail;

(6) Having participated in major criminal activity of a sophisticated nature; or

(7) Notoriety or being highly publicized.

(b) The Warden may limit to a reasonable number persons on the approved restricted general correspondence list of an inmate.

(c) The Warden shall utilize one of the following procedures before placing an inmate on restricted general correpondence.

(1) Where the restriction will be based upon an incident report, procedures must be followed in accordance with inmate disciplinary regulations (Part 541, Subpart B of this Chapter).

(2) Where there is no incident report, the Warden:

(i) Shall advise the inmate in writing of the reasons the inmate is to be placed on restricted general correspondence;

(ii) Shall give the inmate the opportunity to respond to the classification or change in classification; the inmate has the option to respond orally or to submit written information or both; and

(iii) Shall notify the inmate of the decision and the reasons, and shall advise the inmate that the inmate may appeal the decision under the Administrative Remedy Procedure.

(d) When an inmate is placed on restricted general correspondence, the inmate may, except as provided in §§ 540.15 and 540.16:

(1) Correspond with his spouse, mother, father, children, and siblings, unless the correspondent is involved in a violation of correspondence regulations or would be a threat to the security or good order of the institution;

(2) Request other persons also to be placed on the approved correspondence list, subject to investigation, evaluation, and approval by the Warden; with prior approval, the inmate may write to a proposed correspondent to obtain a release authorizing an investigation; and

(3) Correspond with former business associates, unless it appears to the Warden that the proposed correspondent would be a threat to the security or good order of the institution, or that the resulting correspondence could reasonably be expected to result in criminal activity. Correspondence with former business associates is limited to social matters.

(e) The Warden may allow an inmate additional correspondence with persons other than those on his approval mailing list when the correspondence is shown to be necessary and does not require an addition to the mailing list because it is not of an ongoing nature.

§ 540.15 Inmate correspondence while in segregation and holdover status.

(a) The Warden shall permit an inmate in holdover status (i.e., enroute to a designated institution) to have correspondence privileges similar to those of other inmates insofar as practical.

(b) The Warden shall permit an inmate in segregation to have full correspondence privileges unless placed on restricted general correspondence under § 540.14.

§ 540.16 Correspondence between confined inmates.

An inmate may be permitted to correspond with an inmate confined in another penal or correctional institution, providing the other inmate is either a member of the immediate family, or is a party or a witness in a legal action in which both inmates are involved. The Warden may approve such correspondence in other exceptional circumstances, with particular regard to the security level of the institution, the nature of the relationship between the two inmates, and whether the inmate has other regular correspondence. The following additional limitations apply:

(a) Such correspondence may always be inspected and read by staff at the sending and receiving institutions (it may not be sealed by the inmate); and

(b) The Wardens of both institutions must approve of the correspondence.

§ 540.17 Special mail.

(a) The Warden shall open incoming special mail only in the presence of the inmate for inspection for physical contraband and the qualification of any enclosures as special mail. The correspondence may not be read or copied if the sender has adequately identified himself on the envelope, and the envelope is marked "Special Mail—Open only in the presence of the inmate".

(b) In the absence of adequate identification and the "special mail" marking indicated in paragraph (a) of this section appearing on the envelope, staff may treat the mail as general correspondence and may open, inspect, and read the mail.

(c) Outgoing special mail may be sealed by the inmate and is not subject to inspection.

(d) Staff shall stamp the following statement directly on the back side of the inmate's outgoing special mail: "The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has been neither opened nor inspected. If the writer raises a question or problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer encloses correspondence for forwarding to another addressee, please return the enclosure to the above address."

§ 540.18 Legal correspondence.

(a) Staff shall mark each envelope of incoming legal mail (mail from courts or attorneys) to show the date and time of receipt, the date and time the letter is delivered to an inmate and opened in his presence, and the name of the staff member who delivered the letter.

(b) The inmate is responsible for advising his attorney that correspondence will be handled as special mail only if the envelope is marked with the attorney's name and an indication he is an attorney and the envelope is marked "Special Mail—Open only in the presence of the inmate". Legal mail shall be opened in accordance with special mail procedures (see § 540.17).

(c) Grounds for the limitation or denial of an attorney's correspondence rights or privileges are stated in Part 543, Subpart B. If such action is taken, the Warden shall give written notice to the attorney and the inmate affected.

(d) In order to send mail to an attorney's assistant or to a legal aid student or assistant, an inmate shall address the mail to the attorney or legal aid supervisor, or the legal organization or firm, to the attention of the student or assistant.

(e) Mail to an inmate from an attorney's assistant or legal aid student or assistant, in order to be identified and treated by staff as special mail, must be properly identified on the envelope as required in paragraph (b) of this section, and must be marked on the envelope as being mail from the attorney or from the legal aid supervisor.

§ 540.19 Inmate correspondence with representatives of the news media.

(a) An inmate may write through "special mail" to representatives of the news media specified by name or title (see § 540.2(b)).

(b) The inmate may not receive compensation or anything of value for correspondence with the news media. The inmate may not act as reporter or publish under a byline.

(c) Representatives of the news media may initiate correspondence with an inmate. Staff shall open incoming correspondence from representatives of the media and inspect for contraband, for its qualification as media correspondence, and for content which is likely to promote either illegal activity or conduct contrary to Bureau regulations.

§ 540.20 Payment of postage.

(a) Except as provided in paragraphs (d), (e), (f), and (i) of this section, postage charges are the responsibility of the inmate. The Warden shall ensure that the inmate commissary has postage stamps available for purchase by inmates.

(b) Writing paper and envelopes are provided at no cost to the inmate.

(c) Inmate organizations will purchase their own postage.

(d) An inmate who has neither funds nor sufficient postage and who wishes to mail legal mail (includes courts and attorneys) or Administrative Remedy forms will be provided the postage for such mailing. To prevent abuses of this provision, the Warden may impose restrictions on the free legal and administrative remedy mailings.

(e) When requested by an inmate who has neither funds nor sufficient postage, and upon verification of this status by staff, the Warden shall provide the postage for mailing a reasonable number of letters at government expense to enable the inmate to maintain community ties. To prevent abuses of this provision, the Warden may impose restrictions on the free mailings.

(f) Mailing at government expense is also allowed for necessary correspondence in verified emergency situations for inmates with neither funds nor sufficient postage.

(g) Inmates must sign for all stamps issued to them by institution staff.

(h) Mail received with postage due may not be delivered to the inmate until the inmate has authorized withdrawal of funds from his commissary account to pay the postage due.

(i) Holdovers and pre-trail commitments will be provided a reasonable number of letters at government expense.

(j) Inmates may not be permitted to receive stamps or stamped envelopes other than by issuance from the institution or by purchase from commissary.

[46 FR 43809, Aug. 31, 1981]

§ 540.21 Returned mail.

Staff shall open and inspect for contraband all undelivered mail returned to an institution by the Post Office before returning it to the inmate. The purpose of this inspection is to determine if the content originated with the inmate sender identified on the letter or package; to prevent the transmission of material, substances, and property which an inmate is not permitted to possess in the institution; and to determine that the mail was not opened or tampered with before its return to the institution. Any remailing is at the inmate's expense. Any returned mail qualifying as "special mail" is opened and inspected for contraband in the inmate's presence.

§ 540.22 Change of address and forwarding of mail for inmates.

(a) Staff shall make available to an inmate who is being released or transferred appropriate U.S. Postal Service forms for change of address.

(b) Each inmate is responsible for informing the U.S. Postal Service and any correspondents of a change of address.

(c) The Bureau of Prisons will pay postage for mailing one change of address card to the U.S. Postal Service. Additional postage is paid by the inmate.

(d) Except as provided in paragraph (e) of this section, all mail received for a released or transferred inmate will be returned to the U.S. Postal Service for disposition in accordance with U.S. Postal Service regulations.

(e) Staff shall permit an inmate released temporarily on writ to elect whether he wishes his mail held at the institution for a period not to exceed 30 days, or returned to the U.S. Postal Service for disposition in accordance with instructions the inmate may give the U.S. Postal Service.

(1) If the inmate refuses to make this election, staff at the institution shall document this refusal, and any reasons, in the inmate's central file. Staff shall return to the U.S. Postal Service all mail received for such an inmate after the inmate's departure.

(2) If the inmate does not return from writ within the time indicated, staff shall return to the U.S. Postal Service all mail being held for that inmate for disposition in accordance with postal regulations and any instructions which the inmate may give the U.S. Postal Service.

Subpart C—[Reserved]

Subpart D—Visiting Regulations

SOURCE: 45 FR 44232, June 30, 1980, unless otherwise noted.

§ 540.40 Purpose and scope.

The Bureau of Prisons encourages visiting by family, friends, and community groups to maintain the morale of the inmate and to develop closer relationships between the inmate and family members or others in the community. The Warden shall develop procedures consistent with this rule to permit inmate visiting. The Warden may restrict inmate visiting when necessary to insure the security and good order of the institution.

§ 540.41 Visiting facilities.

The Warden shall have the visiting room arranged so as to provide adequate supervision, adapted to the degree of security required by the type of institution. The Warden shall ensure that the visiting area is as comfortable and pleasant as practicable, and appropriately furnished and arranged. If space is available, the Warden shall have a portion of the visiting room equipped and set up to provide facilities for the children of visitors.

(a) Institutions of Security Levels 1, 2, and 3 may permit visits beyond the security perimeter, but always under supervision of an officer.

(b) Institutions of Security Levels 4, 5, and 6 and administrative institutions may establish outdoor visiting, but it will always be inside the security perimeter and always under supervision of an officer.

§ 540.42 Visiting times.

Each Warden shall establish a visiting schedule for the institution. At a minimum, the Warden shall permit visiting on Saturdays, Sundays, and holidays. The restriction of visiting to these days may be a hardship upon some families and arrangements for other suitable hours shall be made if at all possible. Where staff resources permit, the Warden may establish evening visiting hours.

§ 540.43 Frequency of visits and number of visitors.

The Warden shall allow each inmate a minimum of four hours visiting time per month. The Warden may limit the length or frequency of visits only to avoid chronic overcrowding. The Warden may establish a guideline for the maximum number of persons who may visit an inmate at one time, to prevent overcrowding in the visiting room or unusual difficulty in supervising a visit. Exceptions may be made to any local guideline when indicated by special circumstances, such as distance the visitor must travel, frequency of the inmate's visits, or health problems of the inmate or visitor.

§ 540.44 Regular visitors.

An inmate desiring to have regular visitors must submit a list of proposed visitors to the designated staff. Staff shall compile a visiting list for each inmate after suitable investigation (see § 540.51(b)). The list may include:

(a) Members of the Immediate Family—These persons include mother, father, step-parents, foster parents, brothers and sisters, spouse, and children. These individuals are placed on the visiting list, absent strong circumstances which preclude visiting.

(b) Other Relatives—These persons include grandparents, uncles, aunts, in-laws, and cousins. They may be placed on the approved list if the inmate wishes to have visits from them regularly and if there exists no reason to exclude them.

(c) Friends and Associates:

(1) For Security Level 1-3 Institutions: The visiting privilege shall ordinarily be extended to friends and other non-relatives, unless visits could reasonably create a threat to the security and good order of the institution;

(2) For Security Level 4-6 Institutions and administrative institutions: The visiting privilege shall ordinarily be extended to friends and associates having an established relationship prior to confinement, unless such visits could reasonably create a threat to the security and good order of the institution. Exceptions to the prior relationship rule may be made, particularly for inmates without other visitors, when it is shown that the proposed visitor is reliable and poses no threat to the security or good order of the institution.

(d) Persons with Prior Criminal Convictions—The existence of a criminal conviction alone does not preclude visits. Staff shall give consideration to the nature, extent and recentness of convictions, as weighed against the security considerations of the institution. Specific approval of the Warden may be required before such visits take place.

(e) Children under Sixteen—Children under the age of 16 may not visit unless accompanied by a responsible adult. Children shall be kept under supervision of a responsible adult or a children's program. Exceptions in unusual circumstances may be made by special approval of the Warden.

§ 540.45 Business visitors.

No inmate is permitted to engage actively in a business or profession. An inmate who was engaged in a business or profession prior to commitment is expected to assign authority for the operation of such business or profession to a person in the community. Even though the inmate has turned over the operation of a business or profession to another person, there may be an occasion where a decision must be made which will substantially affect the assets or prospects of the business. In such cases, the Warden may permit a special visit.

§ 540.46 Consular visitors.

Whenever it has been determined that an inmate is a citizen of a foreign country, the Warden shall permit the consular representative of that country to visit on matters of legitimate business. The Warden may not withhold this privilege even though the inmate is in disciplinary status.

§ 540.47 Visits from representatives of community groups.

The Warden may approve as regular visitors, for one or more inmates, representatives from community groups such as civic and religious organziations, or other persons whose interests and qualifications for this kind of service are confirmed by staff. The Warden may waive the requirement for the existence of an established relationship prior to confinement for visitors approved under this section.

§ 540.48 Special visits.

The Warden may authorize special visits:

(a) For clergy, former or prospective employers, sponsors, and parole advisors. Visits in this category serve such purposes as assistance in release planning, counseling, and discussion of family problems;

(b) By an authorized visitor at other than regularly established visiting times, or in excess of regularly permitted visits;

(c) By attorneys;

(d) To pre-trial inmates to assist in protecting their business or in preparing for trial.

§ 540.49 Transportation assistance.

The Warden shall ensure that directions for transportation to and from the institution are provided for the approved visitor (see § 540.51(b)(4)). Directions for transportation to and from the institution and pay phone service, with commercial transportation phone numbers posted, are also to be made available at the institution to assist visitors.

§ 540.50 Visits to inmates not in regular population status.

(a) Admission and Holdover Status—The Warden may limit to the immediate family of the inmate visits during the admission-orientation period or for holdovers where there is neither a visiting list from a transferring institution nor other verification of proposed visitors.

(b) Hospital Patients:

(1) When visitors request to see an inmate who is hospitalized in the institution, the Chief Medical Officer (or, in his absence, the Hospital Administrative Officer), in consultation with the Chief Correctional Supervisor, shall determine whether a visit may occur, and if so, whether it may be held in the hospital.

(2) Visits to inmates hospitalized in the community may be restricted to only the immediate family and are subject to the general visiting policy of that hospital.

(c) Detention or Segregation Status—Staff may not suspend an inmate's visiting privileges because of violation of Bureau regulations other than for those specifically concerned with the visiting guidelines or having a reasonable relationship to the orderliness or security of the visiting room.

§ 540.51 Procedures.

(a) Responsibility: The Warden of the institution shall establish and enforce local visiting guidelines in accordance with the rules and regulations of the Bureau of Prisons.

(b) Preparation of the List of Visitors:

(1) Staff shall ask each inmate to submit during the admission-orientation process a list of proposed visitors. After appropriate investigation, staff shall prepare a list of all visitors and distribute that list to the inmate and the visiting room officer.

(2) Staff may request background information from potential visitors who are not members of the inmate's immediate family, before placing them on the inmate's approved visiting list.

(3) If a background investigation is necessary before approving a visitor, the inmate may be held responsible for having a release authorization form forwarded to the proposed visitor. That form must be signed and returned to staff by the proposed visitor prior to any further action regarding visiting. Upon receipt of the authorization form, staff may then forward a questionnaire, along with the release authorization, to the appropriate law enforcement or crime information agency.

(4) Staff shall notify the inmate of each approval or disapproval of a requested person for the visiting list. Upon approval of each visitor, staff shall provide the inmate with a copy of the visiting guidelines and with directions for transportation to and from the institution. The inmate is responsible for notifying the visitor of the approval or disapproval to visit and is expected to provide the approved visitor with a copy of the visiting guidelines and directions for transportation to and from the institution. The visiting guidelines shall include specific directions for reaching the institution and shall cite 18 U.S.C. 1791, which provides a penalty of not more than ten years for any person who introduces or attempts to introduce into or upon the grounds of any Federal penal or correctional institution or takes or attempts to take or send therefrom anything whatsoever without the knowledge and consent of the Chief Executive Officer of the institution.

(5) An inmate's visiting list may be amended at any time in accordance with the procedures of this section.

(c) Identification of Visitors: Staff shall verify the identity of each visitor (through driver's license, photo identification, etc.) prior to admission of the visitor to the institution.

(d) Notification to Visitors: Staff shall make available to all visitors written guidelines for visiting the institution. Staff shall have the visitor sign a statement acknowledging that the guidelines were provided and declaring that the visitor does not have any articles in his/her possession which the visitor knows to be a threat to the security of the institution. Staff may deny the visiting privilege to a visitor who refuses to make such a declaration.

(e) Searching Visitors: Staff may require a visitor to submit to a personal search, including a search of any items of personal property, as a condition of allowing or continuing a visit.

(f) Record of Visitors: The Warden shall maintain a record of visitors to each inmate. The visitor's signature may be required on that record and shall be required on at least one visiting log or record maintained by the institution.

(g) Supervision of Visits: Staff shall supervise each inmate visit to prevent the passage of contraband and to ensure the security and good order of the institution.

(1) The visiting room officer shall ensure that all visits are conducted in a quiet, orderly, and dignified manner. The visiting room officer may terminate visits that are not conducted in the appropriate manner. See 28 CFR § 541.11(c), item 5 for description of an inmate's responsibility during visits.

(2) Staff shall permit limited physical contact, such as handshaking, embracing and kissing, between an inmate and a visitor, unless there is clear and convincing evidence that such contact would jeopardize the safety or security of the institution. Where contact visiting is provided, handshaking, embracing and kissing are ordinarily permitted within the bounds of good taste and only at the beginning and at the end of the visit. The staff may limit physical contact to minimize opportunity for the introduction of contraband and to maintain the orderly operation of the visiting area.

(3) The visiting room officer may not accept articles or gifts of any kind for an inmate, except packages which have had prior approval by the Warden or a designated staff member. The Warden may allow a visitor to leave money with a designated staff member for deposit in the inmate's commissary account.

(4) The officer shall be aware of any articles passed between the inmate and the visitor. If there is any reasonable basis to believe that any item is being passed which constitutes contraband or is otherwise in violation of the law or Bureau regulations, the visiting room officer may examine the item.

§ 540.52 Penalty for violation of visiting regulations.

Any act or effort to violate the visiting guidelines of an institution may result in disciplinary action against the inmate, which may include the denial of future visits, possibly over an extended period of time. Moreover, criminal prosecution may be initiated against the visitor, the inmate, or both, in the case of criminal violations.

Subpart E—Contact With News Media

AUTHORITY: 5 U.S.C. 551, 552a; 18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

SOURCE: 44 FR 38247, June 29, 1979, unless otherwise noted.

§ 540.60 Purpose and scope.

The Bureau of Prisons also has a responsibility to protect the privacy and other rights of inmates and members of the staff. Therefore, an interview in an institution must be regulated to insure the orderly and safe operation of the institution.

§ 540.61 Authorization.

(a) A news media representative who desires to make a visit or conduct an interview at an institution must make application in writing to the Warden, indicating that he or she is familiar with the rules and regulations of the institution and agrees to comply with them.

(b) As a condition of authorizing interviews and making facilities available to conduct an interview, the news media representative shall recognize a professional responsibility to make reasonable attempts to verify any allegations regarding an inmate, staff member or institution.

(c) A representative of the news media is requested to provide the Bureau of Prisons an opportunity to respond to any allegation, which might be published or broadcast prior to distribution.

(d) A representative of the news media shall collect information only from the primary source. A representative of the news media may not obtain and use personal information from one inmate about another inmate who refuses to be interviewed.

(e) The Warden may be contacted concerning discussions or comments regarding applicability of any rule or order.

(f) Failure to adhere to the standards of conduct set forth by this rule for the news media representative constitutes grounds for denying that news media representative, or the news organization which he or she represents, permission to conduct an interview.

(g) Any questions as to the meaning or application of this subpart are resolved by the Director of the Bureau of Prisons.

§ 540.62 Institutional visits.

(a) A media representative shall make advance appointments for visits.

(b) When media representatives visit the institutions, photographs of programs and activities may be taken, and media representatives may meet with groups of inmates engaged in authorized programs and activities. An inmate has the right not to be photographed and not to have his or her voice recorded by the media. A visiting representative of the media is required to obtain written permission from an inmate before photographing or recording the voice of an inmate participating in authorized programs and activities.

(c) The Warden may suspend all media visits during an institutional emergency and for a reasonable time after the emergency.

(d) An inmate currently confined in an institution may not be employed or act as a reporter or publish under a byline.

(e) Interviews by reporters and others not included in § 540.2 may be permitted only by special arrangement and with approval of the Warden.

§ 540.63 Personal interviews.

(a) An inmate may not receive compensation or anything of value for interviews with the news media.

(b) Either an inmate or a representative of the news media may initiate a request for a personal interview at an institution.

(c) Visits by the news media to conduct personal interviews are subject to the same conditions stated in § 540.62. A media representative shall make a request for personal interview within a reasonable time prior to the personal interview.

(d) Staff shall notify an inmate of each interview request, and shall, as a prerequisite, obtain from the inmate written consent for the interview prior to the interview taking place. The written consent or denial becomes part of the inmate's central file.

(e) As a prerequisite to granting the interview, an inmate must authorize the institutional staff to respond to comments made in the interview and to release information to the news media relative to the inmate's comments.

(f) The Warden shall normally approve or disapprove an interview request within 24 to 48 hours of the request.

(g) The Warden shall document any disapproval. A request for interview may be denied for any of the following reasons.

(1) The news media representative, or the news organization which he or she represents, does not agree to the conditions established by this subpart or has, in the past, failed to abide by the required conditions.

(2) The inmate is physically or mentally unable to participate. This must be supported by a medical officer's statement (a psychologist may be used to verify mental incapacity) to be placed in the inmate's record, substantiating the reason for disapproval.

(3) The inmate is a juevnile (under age 18) and written consent has not been obtained from the inmate's parent or guardian. If the juvenile inmate's parents or guardians are not known or their addresses are not known, the Warden of the institution shall notify the representative of the

news media of the inmate's status as a juvenile, and shall then consider the request.

(4) The interview, in the opinion of the Warden, would endanger the health or safety of the interviewer, or would probably cause serious unrest or disturb the good order of the institution.

(5) The inmate is involved in a pending court action and the court having jurisdiction has issued an order forbidding such interviews.

(6) In the case of unconvicted persons (including competency commitments under 18 U.S.C. 4244 and 4246) held in federal institutions, interviews are not authorized until there is clearance with the court having jurisdiction, ordinarily through the U.S. Attorney's Office.

(7) The inmate is a "protection" case and revelation of his or her whereabouts would endanger the inmate's safety.

(h) Interviews are normally held in the institution visiting room during normal weekday business hours. The Warden may:

(1) Determine that another location is more suitable for conducting the interview;

(2) Limit interview time for the entire institution if the Warden determines that the interviews are imposing a serious drain on staff or use of the facilities;

(3) Limit to one one-hour interview per month for an inmate in segregation, restricted, holdover, control unit, or hospital status if required by special security, custodial, or supervisory needs; and

(4) Limit the amount of audio, video, and film equipment or number of media personnel entering the institution if the Warden determines that the requested equipment or personnel would create a disruption within the institution.

(i) In conjunction with the personal interview, if the member of the media wishes to tour the institution, he or she must comply with the provisions of § 540.61.

(j) Interviews are not subject to auditory supervision.

§ 540.64 Press pools.

(a) The Warden may establish a press pool whenever he or she determines that the frequency of requests for interviews and visits reaches a volume that warrants limitations.

(b) Whenever the Warden establishes a press pool, the Warden shall notify all news media representatives who have requested interviews or visits that have not been conducted. Selected representatives are admitted to the institution to conduct the interviews under the specific guidelines established by the Warden.

(c) All members of the press pool are selected by their peers and consist of not more than one representative from each of the following groups:

(1) The national and international news services;

(2) The television and radio networks and outlets;

(3) The news magazines and newspapers; and

(4) All media in the local community where the institution is located. If no interest has been expressed by one or more of these groups, no representative from such group need be selected.

(d) All news material generated by such a press pool is made available to all media without right of first publication or broadcast.

§ 540.65 Release of information.

(a) The Warden shall promptly make announcements stating the facts of unusual, newsworthy incidents to local news media. Examples are deaths, inside escapes, and institution emergencies.

(b) The Warden shall provide information about an inmate that is a matter of public record to the representatives of the media upon request. The information is limited to the inmate's:

(1) Name;

(2) Register number;

(3) Place of incarceration;

(4) Age;

(5) Race;

(6) Conviction and sentencing data: this includes the offense(s) for which convicted, the court where convicted, the date of sentencing, the length of sentence(s), the amount of good time

earned, the parole eligibility date and parole release (presumptive or effective) date, and the date of expiration of sentence, and includes previous Federal, state, and local convictions;

(7) Past movement via transfers or writs;

(8) General institutional assignments.

(c) Information in paragraphs (b)(1) through (8) of this section may not be released if confidential for protection cases.

(d) A request for additional information concerning an inmate by a representative of the news media is referred to the Public Information Officer, Central Office, Washington, D.C.

(e) The Public Information Officer, Central Office, Washington, D.C. shall release all announcements related to:

(1) Bureau of Prisons policy;

(2) Changes in an institutional mission;

(3) Type of inmate population; or

(4) Changes in executive personnel.

Subpart F—Incoming Publications

§ 540.70 Purpose and scope.

(a) The Bureau of Prisons permits an inmate to subscribe to or to receive publications without prior approval and has established procedures to determine if an incoming publication is detrimental to the security, discipline, or good order of the institution or if it might facilitate criminal activity. The term publication, as used in this rule, means a book, or a single issue of a magazine or newspaper, plus such other materials addressed to a specific inmate as advertising brochures, flyers, and catalogues.

(b) The Warden may designate staff to review and where appropriate to approve all incoming publications in accordance with the provisions of this rule. Only the Warden may reject an incoming publication.

[44 FR 38260, June 29, 1979]

§ 540.71 Procedures.

(a) An inmate may receive hardcover publications only from the publisher, from a book club, or from a bookstore. An inmate may receive softcover material (for example, paperback books, newspapers, magazines) from any source. The Warden may have all incoming publications inspected for contraband.

(b) The Warden may reject a publication only if it is determined detrimental to the security, good order, or discipline of the institution or if it might facilitate criminal activity. The Warden may not reject a publication solely because its content is religious, philosophical, political, social or sexual, or because its content is unpopular or repugnant. Publications which may be rejected by a Warden include but are not limited to publications which meet one of the following criteria:

(1) It depicts or describes procedures for the construction or use of weapons, ammunition, bombs or incendiary devices;

(2) It depicts, encourages, or describes methods of escape from correctional facilities, or contains blueprints, drawings or similar descriptions of Bureau of Prisons institutions;

(3) It depicts or describes procedures for the brewing of alcoholic beverages, or the manufacture of drugs;

(4) It is written in code;

(5) It depicts, describes or encourages activities which may lead to the use of physical violence or group disruption;

(6) It encourages or instructs in the commission of criminal activity;

(7) It is sexually explicit material which by its nature or content poses a threat to the security, good order, or discipline of the institution, or facilitates criminal activity.

(c) The Warden may not establish an excluded list of publications. This means the Warden shall review the individual publication prior to the rejection of that publication. Rejection of several issues of a subscription publication is not sufficient reason to reject the subscription publication in its entirety.

(d) Where a publication is found unacceptable, the Warden shall promptly advise the inmate in writing of the decision and the reasons for it. The notice must contain reference to the specific article(s) or material(s) considered objectionable. The Warden shall permit the inmate an opportunity to review this material for purposes of filing an appeal under the Administrative Remedy Procedure unless such review may provide the inmate with information of a nature which is deemed to pose a threat or detriment to the security, good order or discipline of the institution or to encourage or instruct in criminal activity.

(e) The Warden shall provide the publisher or sender of an unacceptable publication a copy of the rejection letter. The Warden shall advise the publisher or sender that he may obtain an independent review of the rejection by writing to the Regional Director within 15 days of receipt of the rejection letter. The Warden shall return the rejected publication to the publisher or sender of the material unless the inmate indicates an intent to file an appeal under the Administrative Remedy Procedure, in which case the Warden shall retain the rejected material at the institution for review. In case of appeal, if the rejection is sustained, the rejected publication shall be returned when appeal or legal use is completed.

(f) The Warden may set limits locally (for fire, sanitation or housekeeping reasons) on the number or volume of publications an inmate may receive or retain in his quarters. The Warden may authorize an inmate additional storage space for storage of legal materials in accordance with the Bureau of Prisons procedures on personal property of inmates.

[44 FR 38260, June 29, 1979, as amended at 45 FR 75126, Nov. 13, 1980]

Subparts G–H—[Reserved]

Subpart I—Telephone Regulations for Inmates

AUTHORITY: 5 U.S.C. 551, 552a; 18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

SOURCE: 44 FR 38249, June 29, 1979, unless otherwise noted.

§ 540.100 Purpose and scope.

An inmate may call a person of his choice outside the institution on a telephone provided for that purpose. Inmate telephone use is subject to limitations and restrictions which the Warden determines are necessary to insure the security, good order, and discipline of the institution and to protect the public. The Warden shall establish procedures and facilities for inmate telephone use. The Warden shall permit an inmate who has not been restricted from telephone use under § 540.103 to make at least one telephone call each three months. Ordinarily, an inmate is allowed at least three minutes for each call.

§ 540.101 Monitoring of inmate telephone calls.

The Warden may establish procedures that enable monitoring of telephone conversations on any telephone located within the institution, said monitoring to be done to preserve the security and orderly management of the institution and to protect the public. The Warden must provide notice to the inmate of the potential for monitoring where it exists. Staff may not monitor an inmate's properly placed call to an attorney. The Warden shall notify an inmate of the proper procedures to have an unmonitored telephone conversation with an attorney.

§ 540.102 Inmate telephone calls to attorneys.

The Warden may not apply frequency limitations on inmate telephone calls to attorneys when the inmate demonstrates that communication with attorneys by correspondence, visiting, or normal telephone use is not adequate.

§ 540.103 Responsibility for inmate misuse of telephones.

The inmate is responsible for any misuse of the telephone. The Warden shall refer incidents of unlawful inmate telephone use to law enforcement authorities. The Warden shall advise an inmate that violation of the institution's telephone regulations may result in institutional disciplinary action (See Part 541, Subpart B).

§ 540.104 Expenses of inmate telephone use.

An inmate is responsible for the expenses of inmate telephone use except that the Warden may direct the government to bear the expense of inmate telephone use under compelling circumstances such as when an inmate has lost contact with his family or has a family emergency. Another example is where the inmate experiences a lack of visits over an extended period of time. This is particularly true where there are no financial resources available either from the inmate or his family.

§ 540.105 Telephone calls for inmates in admission, holdover, or segregation status.

The Warden shall establish procedures for allowing inmates in admission, holdover, or segregation status to make phone calls as provided in § 540.100. Staff may not withhold phone privileges as a disciplinary measure except where the infraction for which disciplinary action is taken involves abuse, or a clear potential for abuse, of phone privileges.

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

Subpart A—[Reserved]

Subpart B—Inmate Discipline

Sec.
541.10 Purpose and scope.
541.11 Notice to inmate of institution rules.
541.12 Incident report and investigation.
541.13 Initial hearing.
541.14 Establishment and functioning of Institution Discipline Committee.
541.15 Procedures in Institution Discipline Committee hearings.
541.16 Dispositions of the Institution Discipline Committee.
541.17 Appeals from Unit Discipline Committee or Institution Discipline Committee Actions.
541.18 Justification for placement in disciplinary segregation and review of inmates in disciplinary segregation.
541.19 Conditions of disciplinary segregation.
541.20 Administrative detention.
541.21 Protection cases.
541.22 Disciplinary procedures for Federal Community Treatment Centers.

Subpart C—[Reserved]

Subpart D—Control Unit Programs

541.40 Purpose and scope.
541.41 Institutional referral.
541.42 Designation of Hearing Administrator.
541.43 Hearing procedure.
541.44 Decision of the Hearing Administrator.
541.45 Executive panel review and appeal.
541.46 Programs and services.
541.47 Admission to Control Unit.
541.48 Review of Control Unit placement.
541.49 Release from the Control Unit.

Subpart A—[Reserved]

Subpart B—Inmate Discipline

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Source: 44 FR 23180, Apr. 18, 1979, unless otherwise noted.

§ 541.10 Purpose and scope.

(a) So that inmates may live in a safe and orderly environment, it is necessary for institution authorities to impose discipline on those inmates whose behavior is not in compliance with institution rules.

(b) The following general principles apply in every disciplinary action taken:

(1) Only institution staff may take disciplinary action.

(2) Staff shall take disciplinary action at such times and to the degree necessary to regulate an inmate's behavior within institution rules and to promote a safe and orderly institution environment.

(3) Staff shall control inmate behavior in a completely impartial and consistent manner.

(4) Disciplinary action may not be capricious or retaliatory.

(5) Staff may not impose or allow imposition of corporal punishment of any kind.

(6) If it appears at any stage of the disciplinary process that an inmate is mentally ill, staff shall refer the

inmate to a mental health professional for determination of whether the inmate is responsible for his conduct or incompetent. Staff may take no disciplinary action against an inmate whom mental health staff determines to be incompetent or not responsible for his conduct. A person is not responsible for his conduct if, at the time of the conduct, he lacks substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the rules of the institution, because of a mental disease or defect. A person is incompetent if he lacks the ability to understand the nature of the disciplinary proceedings, or to assist in his defense at the proceedings.

§ 541.11 Notice to inmate of institution rules.

Staff shall advise each inmate in writing promptly after arrival at an institution of:

(a) The types of disciplinary action which may be taken by institution staff;

(b) The disciplinary system within the institution and the time limits thereof (see Tables 2 and 3);

(c) The inmate's rights and responsibilities:

Rights	Responsibilities
1. You have the right to expect that as a human being you will be treated respectfully, impartially, and fairly by all personnel.	1. You have the responsibility to treat others, both employees and inmates, in the same manner.
2. You have the right to be informed of the rules, procedures, and schedules concerning the operation of the institution.	2. You have the responsibility to know and abide by them.
3. You have the right to freedom of religious affiliation, and voluntary religious worship.	3. You have the responsibility to recognize and respect the rights of others in this regard.
4. You have the right to health care, which includes nutritious meals, proper bedding and clothing, and a laundry schedule for cleanliness of the same, an opportunity to shower regularly, proper ventilation for warmth and fresh air, a regular exercise period, toilet articles and medical and dental treatment.	4. It is your responsibility not to waste food, to follow the laundry and shower schedule, to maintain neat and clean living quarters, and to seek medical and dental care as you may need it.
5. You have the right to visit and correspond with family members, and friends, and correspond with members of the news media in keeping with the facility rules.	5. It is your responsibility to conduct yourself properly during visits, not to accept or pass contraband, and not to violate the law or institution rules through your correspondence.
6. You have the right to unrestricted and confidential access to the courts by correspondence (on matters such as the legality of your conviction, civil matters, pending criminal cases, and conditions of your imprisonment).	6. You have the responsibility to present honestly and fairly your petitions, questions, and problems to the court.
7. You have the right to legal counsel from an attorney of your choice by interviews and correspondence.	7. It is your responsibility to use the services of an attorney honestly and fairly.
8. You have the right to participate in the use of law library reference materials to assist you in resolving legal problems. You also have the right to receive help when it is available through a legal assistance program.	8. It is your responsibility to use these resources in keeping with the procedures and schedule prescribed and to respect the rights of other inmates to the use of the materials and assistance.
9. You have the right to a wide range of reading material for educational purposes and for your own enjoyment. These materials may include magazines and newspapers sent from the community, with certain restrictions.	9. It is your responsibility to seek and utilize such materials for your personal benefit, without depriving others of their equal rights to the use of this material.
10. You have the right to participate in education, vocational training and employment as far as resources are available, and in keeping with your interests, needs, and abilities.	10. You have the responsibility to take advantage of activities which may help you live a successful and law abiding life within the institution and in the community. You will be expected to abide by the regulations governing the use of such activities.

(d) Prohibited acts and disciplinary severity scale:

There are four categories of prohibited acts—Greatest, High, Moderate, and Low Moderate. Specific sanctions are authorized for each category (see Table 1 for a discussion of each sanction). Imposition of a sanction requires that the inmate first is found to have committed a prohibited act. *Aiding* another person to commit any of these offenses, *attempting* to commit any of these offenses, and *making plans* to commit any of these offenses, in all categories of severity, *shall be considered the same as a commission of the offense itself.* In these cases, the letter "A" is combined with the offense code.

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For example, planning an escape would be considered as Escape and coded 102A. Likewise, attempting the adulteration of any food or drink would be coded 209A. Suspensions of any sanction cannot exceed six months. Revocation and execution of a suspended sanction require that the inmate first is found to have committed any subsequent prohibited act. Only the Institution Discipline Committee (IDC) may execute, suspend, or revoke and execute suspension of sanctions A through F. The Institution Discipline Committee or Unit Discipline Committee (UDC) may execute, suspend or revoke and execute suspensions of sanctions G through P. Revocations and execution of suspensions may be made only at the level (IDC or UDC) which originally imposed the sanction.

(1) Greatest category offenses: The Institution Discipline Committee shall impose and execute one or more of sanctions A through E. The Committee may also suspend one or more additional sanctions A through F. The Committee may impose and execute sanction F only in addition to execution of one or more of sanctions A through E.

(2) High category offenses: The appropriate committee shall impose and execute one or more of sanctions A through M. They may also suspend one or more additional sanctions A through M.

(3) Moderate category offenses: The appropriate committee shall impose at least one sanction A through N, but may suspend any sanction or sanctions imposed.

(4) Low moderate category offenses: The appropriate committee shall impose at least one sanction E through P, but may suspend any sanction or sanctions imposed.

If the Unit Discipline Committee has previously imposed a suspended sanction and subsequently refers a case to the Institution Discipline Committee, the referral shall include an advisement to the IDC of any intent to revoke that suspension if the IDC finds that the prohibited act was committed. If the Institution Discipline Committee then finds that the prohibited act was committed, they shall so advise the Unit Discipline Committee who may then revoke the previous suspension.

The Unit Discipline Committee shall refer all Greatest Severity Prohibited Acts to the Institution Discipline Committee with findings and recommendations as appropriate.

GREATEST CATEGORY

Code and Prohibited Acts	Sanctions
100 Killing 101 Assaulting any person (includes sexual assault) 102 Escape from escort; escape from a secure institution (Security Level 2 through 6); or escape from a Security Level 1 institution *with* violence 103 Setting a fire (charged with this act in this category only when found to pose a threat to life or a threat of serious bodily harm or in furtherance of a prohibited act of Greatest Severity, e.g., in furtherance of a riot or escape; otherwise the charge is properly classified Code 218, or 329) 104 Possession or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive or any ammunition 105 Rioting 106 Encouraging others to riot 107 Taking hostage(s) 199 Conduct which disrupts or interferes with the security or orderly running of the institution (*Conduct must be of the Greatest Severity nature*)	A. Recommend parole date rescission or retardation. B. Forfeit earned statutory good time (up to 100%) and/or terminate or disallow extra good time. C. Disciplinary Transfer (recommend). D. Disciplinary segregation (up to 60 days). E. Make monetary restitution. F. Withhold statutory good time.[1]

See footnote at end of table.

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HIGH CATEGORY

Code and Prohibited Acts	Sanctions
200 Escape from unescorted Community Programs and activities and Open Institutions (Security Level 1) and from outside secure institutions—*without* violence 201 Fighting with another person 202 Possession or introduction of an unauthorized tool 203 Threatening another with bodily harm or any other offense 204 Extortion, blackmail, protection: Demanding or receiving money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing 205 Engaging in sexual acts 206 Making sexual proposals or threats to another 207 Wearing a disguise or a mask 208 Tampering with or blocking any lock device 209 Adulteration of any food or drink 210 Possession, introduction, or use of any narcotics, narcotic paraphernalia, or drugs not prescribed for the individual by the medical staff 211 Possessing any officer's or staff clothing 212 Engaging in, or encouraging, a group demonstration 213 Encouraging others to refuse to work, or to participate in a work stoppage 214 Refusing to provide a urine sample or to take part in other drug-abuse testing 215 Introduction of alcohol into BOP facility 216 Giving or offering an official or staff member a bribe, or anything of value 217 Giving money to, or receiving money from, any person for purposes of introducing contraband or for any other illegal or prohibited purposes 218 Destroying, altering, or damaging government property, or the property of another person, having a value in excess of $100.00 299 Conduct which disrupts or interferes with the security or orderly running of the institution (*Conduct must be of the High Severity nature*)	A. Recommend parole date rescission or retardation. B. Forfeit earned statutory good time up to 50% or up to 60 days, whichever is less, and/or terminate or disallow extra good time. C. Disciplinary transfer (recommend). D. Disciplinary segregation (up to 30 days). E. Make monetary restitution. F. Withhold statutory good time. G. Loss of privileges: Commissary, movies, recreation, etc. H. Change housing (quarters). I. Remove from program and/or group activity. J. Loss of job. K. Impound inmate's personal property. L. Confiscate contraband. M. Restrict to quarters.

MODERATE CATEGORY

Code and Prohibited Acts	Sanctions
300 Indecent exposure 301 Stealing (theft) 302 Misuse of authorized medication 303 Possession of money or currency, unless specifically authorized 304 Loaning of property or anything of value for profit or increased return 305 Possession of anything not authorized for retention or receipt by the inmate, and not issued to him through regular channels 306 Refusing to work, or to accept a program assignment 307 Refusing to obey an order of any staff member (May be categorized and charged in terms of greater severity, according to the nature of the order being disobeyed; e.g., failure to obey an order which furthers a riot would be charged as 105, Rioting; refusing to obey an order which furthers a fight would be charged as 201, Fighting; refusing to provide a urine sample when ordered would be charged as Code 214) 308 Violating a condition of a furlough 309 Violating a condition of a community program 310 Unexcused absence from work or any assignment 311 Failing to perform work as instructed by the supervisor 312 Insolence towards a staff member 313 Lying or providing false statement to a staff member	A. Recommended parole date rescission or retardation. B. Forfeit earned statutory good time up to 25% or up to 30 days, whichever is less, and/or terminate or disallow extra good time. C. Disciplinary transfer (recommend). D. Disciplinary segregation (up to 15 days). E. Make monetary restitution. F. Withhold statutory good time.[1] G. Loss of privileges: Commissary, movies, recreation, etc. H. Change housing (quarters). I. Remove from program and/or group activity. J. Loss of job. K. Impound inmate's personal property. L. Confiscate contraband. M. Restrict to quarters. N. Extra duty.

See footnote at end of table.

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MODERATE CATEGORY—Continued

Code and Prohibited Acts	Sanctions
314 Counterfeiting, forging or unauthorized reproduction of any document, article of identification, money, security, or official paper. (May be categorized in terms of greater severity according to the nature of the item being reproduced; e.g., counterfeiting release papers to effect escape, Code 102 or Code 200)	
315 Participating in an unauthorized meeting or gathering	
316 Being in an unauthorized area	
317 Failure to follow safety or sanitation regulations	
318 Using any equipment or machinery which is not specifically authorized	
319 Using any equipment or machinery contrary to instructions or posted safety standards	
320 Failing to stand count	
321 Interfering with the taking of count	
322 Making, possessing, or using intoxicants	
323 Refusing to breathe into a breathalyzer or take part in other alcohol abuse testing	
324 Gambling	
325 Preparing or conducting a gambling pool	
326 Possession of gambling paraphernalia	
327 Unauthorized contacts with the public	
328 Giving money or anything of value to, or accepting money or anything of value from: another inmate, or any other person without staff authorization	
329 Destroying, altering, or damaging government property, or the property of another person, having a value of $100.00 or less	
330 Being unsanitary or untidy; failing to keep one's person and one's quarters in accordance with posted standards	
399 Conduct which disrupts or interferes with the security or orderly running of the institution (*Conduct must be of the Moderate Severity nature*)	[1]

LOW MODERATE CATEGORY

Code and Prohibited Acts	Sanctions
400 Possession of property belonging to another person	E. Make monetary restitution.
401 Possessing unauthorized clothing	F. Withhold statutory good time.
402 Malingering, feigning illness	G. Loss of privileges: Commissary, movies, recreation, etc.
403 Smoking where prohibited	H. Change housing (quarters).
404 Using abusive or obscene language	I. Remove from program and/or group activity.
405 Tattooing or self-mutilation	J. Loss of job.
406 Unauthorized use of mail or telephone (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G)	K. Impound inmate's personal property. L. Confiscate contraband. M. Restrict to quarters.
407 Conduct with a visitor in violation of institution regulations (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G)	N. Extra duty. O. Reprimand. P. Warning.
408 Conducting a business	

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[1] Can be in addition to A through E—cannot be the only sanction executed.

Sanctions

Table 1

1. *Sanctions of the Institution Discipline Committee:* (Upon finding the inmate committed the prohibited act)

A. *Recommend parole date rescission or retardation.* The IDC may make recommendations to the U.S. Parole Commission for retardation or rescission of parole grants. This may require holding fact-finding hearings upon request of or for the use of the Commission.

B. *Forfeit earned statutory good time and/or terminate or disallow extra good time.* The statutory good time available for forfeiture is limited to an amount computed by multiplying the number of months served at the time of offense for which forfeiture action is taken, by the applicable monthly rate specified in 18 U.S.C., Section 4161 (less any previous forfeiture or withholding outstanding). Disallowance of extra good time

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is limited to the extra good time for the calendar month in which the violation occurs. It may not be withheld or restored. Authority to restore forfeited statutory good time is delegated to *only* the Institution Discipline Committee of each institution. Limitations on this sanction and eligibility for restoration are based on the severity scale. (See § 541.11e)

C. *Recommend disciplinary transfer.* The IDC may recommend that an inmate be transferred to another institution for disciplinary reasons.

Where a present or impending emergency requires immediate action, the Warden may recommend for approval of the receiving Regional Director the transfer of an inmate prior to an IDC hearing. Transfers for disciplinary reasons prior to a hearing before the IDC may be used only in emergency situations and only with approval of the receiving Regional Director. When an inmate is transferred under these circumstances, the sending institution shall forward copies of incident reports and other relevant materials with completed investigation to the receiving institution's Institution Discipline Committee. The inmate shall receive a hearing before the IDC at the receiving institution as soon as practicable under the circumstances to consider the factual basis of the charge of misconduct and the reasons for the emergency transfer. All procedural requirements applicable to IDC hearings contained in this rule are appropriate, except that written statements of unavailable witnesses are liberally accepted instead of live testimony.

D. *Disciplinary segregation.* The IDC may direct that an inmate be placed or retained in disciplinary segregation pursuant to guidelines contained in this rule. Consecutive disciplinary segregation sanctions can be imposed and executed for inmates charged with and found to have committed offenses that are part of different "episodes" only. For example, if an inmate was in an unauthorized area and set a fire, the inmate could be charged with both offenses, but if found to have committed the prohibited act, the individual would only be able to receive up to 60 days in disciplinary segregation, which is the maximum segregation sanction for setting a fire. However, if the inmate was in an unauthorized area and set a fire and later, on the way to administrative detention, struck an officer, the inmate could be charged with assaulting any person, and combined with the first two charges, could receive a maximum of 120 days in disciplinary segregation. Similarly, an inmate may be serving a 60-day sanction in disciplinary segregation and commit a High Severity Prohibited Act, whereupon the person can be given an additional, consecutive 30 days by the IDC. Specific limits on time in disciplinary segregation are based on the severity scale. (See § 541.11e)

E. *Make monetary restitution.* The IDC may direct that an inmate reimburse the U.S. Treasury for any damages to U.S. Government property that the individual is determined to have caused or contributed to.

F. *Withholding statutory good time.* The IDC may direct that an inmate's good time be withheld. Withholding of good time should not be applied as a universal punishment to all persons in disciplinary segregation status. Withholding is limited to the good time creditable for the single month during which the violation occurs.

Some offenses, such as refusal to work at an assignment, may be recurring, thereby permitting, when ordered by the Institution Discipline Committee, consecutive withholding actions. For this to occur, the Committee shall review, near the beginning of the month or at the 30-day review, the offense with the inmate. For an on-going offense, staff need not prepare a new Incident Report or conduct an investigation or initial hearing. The Committee shall provide the inmate an opportunity to appear in person and to present a statement orally or (if he prefers) in writing. The Institution Discipline Committee shall document its action on, or by an attachment to, the initial IDC report. If further withholding is ordered, the Committee shall advise the inmate of his right to appeal through the Administrative Remedy Procedure (Part 542)

Only the Institution Discipline Committee may restore withheld statutory good time. Restoration eligibility is based on the severity scale. (See § 541.11e).

2. *Sanctions of the Institution Discipline Committee/Unit Discipline Committee:* (Upon finding the inmate committed the prohibited act).

G. *Loss of privileges: Commissary, movies, recreation, etc.* The IDC or UDC may direct that an inmate forego specific privileges for a specified period of time. Ordinarily, loss of privileges is used as a sanction in response to an abuse of that privilege: e.g., loss of telephone privilege for a specified period of time for an abuse of the telephone privilege. However, loss of leisure privileges, such as movies, television, and recreation, may be appropriate sanctions for misconduct which is not related to the privilege.

H. *Change housing (quarters).* The IDC or UDC may direct that an inmate be removed from current housing and placed in other housing.

I. *Remove from program and/or group activity.* The IDC or UDC may direct that an inmate forego participating in any program or group activity for a specified period of time.

J. *Loss of job.* The IDC or UDC may direct that an inmate be removed from present job and/or be assigned to another job.

K. *Impound inmate's personal property.* The IDC or UDC may direct that an inmate's personal property be stored in the institution (when relevant to offense) for a specified period of time.

L. *Confiscate contraband.* The IDC or UDC may direct that any contraband in the possession of an inmate be confiscated and disposed of appropriately.

M. *Restrict quarters.* The IDC or UDC may direct that an inmate be confined to quarters or in its immediate area for a specified period of time.

N. *Extra duty.* The IDC or UDC may direct that an inmate perform tasks other than those performed during regularly assigned institutional job.

O. *Reprimand.* The IDC or UDC may reprimand an inmate either verbally or in writing.

P. *Warning.* The IDC or UDC may verbally warn an inmate regarding committing prohibited act(s).

And (e) Sanctions by severity of prohibited act, with eligibility for restoration of forfeited and withheld statutory good time.

Severity of Act	Sanctions	Max. Amt. Forf. SGT	Max. Amt. W/hd SGT	Elig. Restoration Forf. SGT	Elig. Restoration W/hd SGT	Max. Dis Seg
Greatest	A-F	100%	Good time creditable for single month during which violation occurs. Applies to all categories	24 mons	18 mons	60 days
High	A-H	50% or 60 days, whichever is less		18 mons	12 mons	30 days
Moderate	A-H	25% or 30 days, whichever is less		12 mons	6 mons	15 dys
Low Moderate	E-P	N/A		N/A	3 mons	N/A

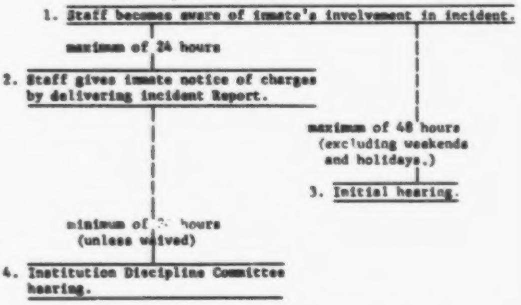
SUMMARY OF DISCIPLINARY SYSTEM

TABLE 2

Procedures	Dispositions
1. Incident involving possible commission of prohibited act.	Observing officer may resolve informally or drop the charges.
2. Officer prepares incident report and forwards it to supervisor.	Supervisor may resolve informally or drop charges.
3. Appointment of investigator who conducts investigation and forwards material to Unit Discipline Committee.	
4. Initial hearing before Unit Discipline Committee.	Unit Discipline Committee may drop or resolve informally any High, Moderate or Low Moderate charge, impose minor sanctions or refer to Institution Discipline Committee.
5. Hearing before Institution Discipline Committee.	Institution Discipline Committee may impose major or minor sanctions, or drop the charges.
6. Appeals through Administrative Remedy Procedures.	The Warden, Regional Director, or General Counsel may approve, modify or reverse, but may not increase any disciplinary action taken.

TIME LIMITS IN DISCIPLINARY PROCESS

TABLE 3


1. Staff becomes aware of inmate's involvement in incident.
maximum of 24 hours
2. Staff gives inmate notice of charges by delivering incident Report.
maximum of 48 hours (excluding weekends and holidays.)
3. Initial hearing.
minimum of [illegible] hours (unless waived)
4. Institution Discipline Committee hearing.

NOTE: These time limits are subject to exceptions as provided in the rules.

Staff may suspend disciplinary proceedings for a period not to exceed two weeks while informal resolution is attempted. If informal resolutions is unsuccessful, staff may reinstitute disciplinary proceedings at the same stage at which suspended. The time requirements then begin running again at the same point at which they were suspended.

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§ 541.12 Incident report and investigation.

(a) *Incident Report.* The Bureau of Prisons encourages informal resolution (requiring consent of both parties) of incidents involving violations of institution regulations. However, when staff witnesses or has a reasonable belief that a violation of institution regulations has been committed by an inmate, and when staff considers informal resolution of the incident inappropriate or unsuccessful, staff shall prepare an Incident Report and promptly forward it to the appropriate correctional supervisor. The supervisor may informally dispose of the Incident Report or forward the Incident Report for investigation consistent with this section. The correctional supervisor shall expunge the inmate's file of the Incident Report if informal resolution is accomplished.

(b) *Investigation.* Staff shall conduct the investigation promptly unless circumstances beyond the control of the investigator intervene. The investigating officer should be an employee of supervisory level and may not be the employee reporting the incident in question. When it appears likely that the incident may be the subject of a criminal prosecution, the investigating officer shall suspend the investigation, and staff may not question the inmate until the Federal Bureau of Investigation or other investigative agency interviews have been completed or until the agency responsible for the criminal investigation advises that staff questioning may occur. The inmate may receive a copy of the Incident Report prior to being seen by the investigating agency. The investigating officer (Bureau of Prisons) shall give the inmate a copy of the Incident Report at the beginning of the investigation, unless there is good cause for delivery at a later date, such as absence of the inmate from the institution, a medical condition militating against delivery, or the pendency of certain criminal proceedings. If the investigation is delayed for any reason, any employee may deliver the charge(s) to the inmate. The staff member shall note the date and time the inmate received a copy of the Incident Report. The investigator shall also read the charge(s) to the inmate and ask for his statement concerning the incident unless it appears likely that the incident may be the subject of criminal prosecution. The investigator shall advise the inmate that he has the right to remain silent at all stages of the disciplinary process but that his silence may be used to draw an adverse inference against him at any stage of the institutional disciplinary process. The investigator shall also inform the inmate that his silence alone may not be used to support a finding that he has committed a prohibited act. The investigator shall then thoroughly investigate the incident. He shall record all steps and actions taken on the Incident Report and forward all relevant material to the staff holding the initial hearing. The inmate does not receive a copy of the investigation. However, if the case is ultimately forwarded to the Institution Discipline Committee, the Committee shall give a copy of the investigation and other relevant materials to the inmate's staff representative for use in presentation on the inmate's behalf.

§ 541.13 Initial hearing.

The Warden shall delegate to one or more institution staff members (usually a unit discipline committee) the authority and duty to hold an initial hearing upon completion of the investigation. The Warden shall authorize these staff members to impose minor sanctions (G through P) for violation of prohibited act(s). In order to insure impartiality, the appropriate staff member(s) (hereinafter usually referred to as the Unit Disciplinary Committee (UDC)) may not be the reporting or investigating officer or a witness to the incident. However, a staff member witnessing an incident may serve on the UDC where virtually every staff member in the institution witnesses the incident in whole or in part. If the UDC finds at the initial hearing that an inmate has committed a prohibited act, the UDC may impose minor dispositions and sanctions or refer the charge(s) to the Institution Discipline Committee for further hearing. The following minimum standards apply to initial hearings in all institutions.

(a) Staff shall give each inmate charged with violating an institution rule a written copy of the charge(s) against the inmate within 24 hours of the time staff became aware of the inmate's involvement in the incident.

(b) Each inmate so charged is entitled to an initial hearing before the UDC, held within 48 hours (excluding weekends and holidays) of the time staff became aware of the inmate's involvement in the incident to consider the charge(s) brought against the inmate.

(c) The inmate is entitled to be present at the initial hearing except during deliberations of the decision maker(s) or when institutional security would be jeopardized by his presence. The UDC shall clearly document in the record of the hearing reasons for excluding an inmate from the hearing. An inmate may waive the right to be present at this hearing, provided that the waiver is documented by staff and reviewed by the UDC. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it may be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. The UDC may conduct a hearing in the absence of an inmate when the inmate waives the right to appear. When an inmate escapes or is otherwise absent from custody, the UDC shall conduct a hearing in the inmate's absence at the institution in which the inmate was last confined.

(d) The inmate is entitled to make a statement and to present documentary evidence in his own behalf.

(e) The Unit Discipline Committee may informally resolve any High, Moderate, or Low Moderate charge. The UDC shall expunge the inmate's file of the Incident Report if informal resolution is accomplished.

(f) The Unit Discipline Committee shall consider all evidence presented at the hearing and shall make a decision in accordance with the greater weight of the evidence and supported by substantial evidence. The UDC shall find that the inmate either:

(1) Committed the prohibited act charged or a similar prohibited act if reflected in the Incident Report, or

(2) Did not commit the prohibited act charged or a similar prohibited act if reflected in the Incident Report.

The UDC shall give the inmate a written copy of the decision and disposition. Any action taken as a minor disposition is reviewable under the Administrative Remedy Procedure (Part 542 of this chapter).

(g) When an alleged violation of institution rules is serious and warrants consideration for other than minor sanctions (G through P), the UDC shall refer the charge(s) to the Institution Discipline Committee (IDC) for hearing and disposition. The UDC shall forward copies of all relevant documents to the chairman of the IDC with a brief statement of reasons for the referral along with any recommendations for appropriate disposition if the IDC finds the inmate has committed the act charged or a similar prohibited act. The inmate whose charge is being referred to the Institution Discipline Committee may be retained in administrative detention or other restricted status, but the UDC may not impose a final disposition if the matter is being referred to the IDC.

(h) When charges are to be referred to the Institution Discipline Committee, the UDC shall advise the inmate of the rights afforded at a hearing before the IDC. The UDC shall ask the inmate to indicate a choice of staff representative, if any, and the names of any witnesses the inmate wishes to be called to testify at the hearing and what testimony they are expected to provide.

(i) When the Unit Discipline Committee holds a full hearing and determines that the inmate did not commit a prohibited act of High, Moderate or Low Moderate Severity, the UDC shall expunge the inmate's file of the Incident Report and related documents. The UDC must refer to the Institution Discipline Committee all incidents involving prohibited acts of Greatest Severity.

(j) The UDC may extend time limits imposed in this section for a good cause shown by the inmate or staff and documented in the record of the hearing.

§ 541.14 Establishment and functioning of Institution Discipline Committee.

(a) The Warden shall establish a single Institution Discipline Committee. In the event of a serious disturbance or other emergency, or if an inmate commits an offense in the presence of the IDC, the Warden may establish more than one Institution Discipline Committee with approval of the appropriate Regional Director.

(b) The Warden may appoint as many members to the Institution Discipline Committee as are appropriate. At least three members, including the chairman, shall be present at any hearing to constitute a quorum. The chairman and at least one member present at the hearing must be of the department head level or higher. The third member and additional members of the Committee need not be of department head level. For the purpose of this section, "department head" includes acting department head. In order to insure impartiality, no member of the IDC may be the reporting officer, investigating officer, or UDC member or a witness to the incident or play any significant part in having the charge(s) referred to the IDC. However, a staff member witnessing an incident may sit as a member of the IDC where virtually every staff member in the institution witnessed the incident in whole or in part.

(c) The Institution Discipline Committee shall conduct hearings, make findings, and impose appropriate sanctions for incidents of inmate misconduct referred to it for disposition following the hearing required by § 541.13 before the UDC. The IDC may not hear any case or impose any sanctions in a case not heard and referred by the UDC. Only the Institution Discipline Committee shall have the authority to impose or suspend sanctions A through F. This Committee shall conduct reviews of inmates placed in disciplinary segregation in accordance with the requirements of § 541.18.

§ 541.15 Procedures in Institution Discipline Committee hearings.

The Institution Discipline Committee shall proceed as follows:

(a) The Warden shall give an inmate advance written notice of the charge(s) against the inmate no less than 24 hours before his appearance before the Institution Discipline Committee unless the inmate is to be released from custody within that time. An inmate may waive in writing the 24-hour notice requirement.

(b) The Warden shall provide an inmate the service of a full time staff member to represent the inmate at the hearing before the Institution Discipline Committee should the inmate so desire. The Warden, the members of the IDC, and the reporting officer, investigating officer, and UDC members involved in the case may not act as staff representative. The Warden may exclude other staff from acting as staff representative when there is a potential conflict in roles. The staff representative shall be available to assist the inmate if the inmate desires by speaking to witnesses and by presenting favorable evidence to the IDC on the merits of the charge(s) or in extenuation or mitigation of the charge(s). The chairman shall arrange for the presence of the staff representative selected by the inmate. If the staff member selected declines or is unavailable because of absence from the institution, the inmate has the option of selecting another representative, or in the case of an absent staff member of waiting a reasonable period for the staff member's return, or of proceeding without a staff representative. When several staff members decline this role, the Warden shall appoint a staff representative to assist the inmate. The IDC shall afford a staff representative adequate time to speak with the inmate and interview requested witnesses where appropriate. While it is expected that a staff member will have had ample time to prepare prior to the hearing, delays in the hearing to allow for adequate preparation may be ordered by the chairman of the Institution Discipline Committee.

(c) The inmate is entitled to make a statement and to present documentary evidence in his own behalf. An inmate has the right to submit names of requested witnesses and have them called to testify and to present documents in the inmate's behalf, provided the calling of witnesses or the disclosure of documentary evidence does not jeopardize or threaten institutional or an individual's security. The chairman shall call those witnesses who have information directly relevant to the charge(s) and who are reasonably available. This may include witnesses from outside of the institution. The inmate charged may be excluded during the appearance of the outside witness. The appearance of the outside witness should be in an area of the institution in which outside visitors are usually allowed. The chairman need not call repetitive witnesses. The reporting officer and other adverse witnesses need not be called if their knowledge of the incident is adequately summarized in the Incident Report and other investigative materials supplied to the IDC. The chairman shall request submission of written statements from unavailable witnesses when necessary for an appreciation of the circumstances surrounding the charge(s). The chairman shall document reasons for declining to call requested witnesses in the IDC report. The inmate's staff representative, or when the inmate waives staff representation members of the Committee, shall question witnesses requested by the inmate who are called before the IDC. The inmate who has waived staff representation may submit questions for requested witnesses in writing to the Committee. The inmate may not question any witness at the hearing.

(d) An inmate has the right to be present throughout the Institution Discipline Committee hearing except during deliberations of the Committee or when institution security would be jeopardized. The chairman must document in the record the reason(s) for excluding an inmate from the hearing. An inmate may waive the right to be present at the hearing, provided that the waiver is documented by staff and reviewed by the IDC. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it may be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. The Committee may conduct a hearing in the absence of an inmate when the inmate waives the right to appear. When an inmate escapes or is otherwise absent from custody, the Institution Discipline Committee shall conduct a hearing in the inmate's absence at the institution in which the inmate was last confined. When an inmate who has had any sanctions imposed by the IDC while absent from custody returns to custody, the Warden shall have the escape charge reheard before the Institution Discipline Committee at the institution to which the inmate is designated after return to custody, and following appearance before the Unit Discipline Committee at that institution. The UDC shall ensure that the inmate has all rights required for appearance at the Institution Discipline Committee including delivery of charge(s), advisement of the right to remain silent and other rights to be exercised at the IDC. All the applicable procedural requirements of Institution Discipline Committee hearings apply to this rehearing, except that written statements of witnesses not readily available may be liberally used instead of in-person witnesses. The IDC upon rehearing may dismiss the charge(s), or may modify but may not increase the sanctions previously imposed in the inmate's absence.

(e) The IDC, at any time prior to making a decision as to whether or not a prohibited act was committed, may continue the hearing until a later date whenever further investigation or more evidence is needed.

(f) The IDC shall consider all evidence presented at the hearing and shall make a decision in accordance with the greater weight of the evidence and which is supported by substantial evidence manifested in the record of the proceedings. The Committee shall find that the inmate either:

(1) Committed the prohibited act charged or a similar prohibited act if reflected in the Incident Report, or

(2) Did not commit the prohibited act charged or a similar prohibited act if reflected in the Incident Report.

(g) The Institution Discipline Committee shall prepare a record of its proceedings which need not be verbatim. This record must be sufficient to document the advisement of inmate rights, the Committee's findings, the Committee's decision and the specific evidence relied on by the Committee, and must include a brief statement of the reasons for the sanctions imposed. The evidence relied upon, the decision, and the reasons for the actions taken must be set out in specific terms unless doing so would jeopardize institutional security. The IDC shall give the inmate a written copy of the decision and disposition.

(h) The Institution Discipline Committee shall expunge an inmate's file of the Incident Report and related documents whenever the Committee finds the inmate did not commit a prohibited act. The requirement for expunging the inmate's file does not preclude maintaining for research purposes copies of disciplinary actions resulting in "not guilty" findings in a master file separate from the inmate's institution file. However, institution staff may not use or allow the usage of the contents of this master file in a manner which would adversely affect the inmate. Likewise, the expungement requirement does not require the destruction of medical reports or other reports relating to a particular inmate which must be maintained to document medical or other treatment given in a special housing unit. If an inmate's conduct during one continuous incident may constitute more than one prohibited act, and if the incident is reported in a single Incident Report, and if the IDC finds the inmate has not committed every prohibited act charged, then the Committee shall record its findings clearly and shall mark out on the Incident Report the incident and code references to charges which were not proved. Institution staff may not use the existence of charged but unproved misconduct against the inmate.

§ 541.16 Dispositions of the Institution Discipline Committee.

The Institution Discipline Committee has available a broad range of sanctions and dispositions when it has completed a hearing. The Institution Discipline Committee may do any of the following:

(a) Dismiss any charge(s) before it upon a finding that the inmate did not commit the prohibited act(s). The Committee shall order the record of charge(s) expunged upon such finding.

(b) Impose sanctions A through P as provided in § 541.11(d).

(c) Suspend the execution of a sanction it imposes as provided in § 541.11(d).

§ 541.17 Appeals from Unit Discipline Committee or Institution Discipline Committee Actions.

At the time the Unit Discipline Committee or Institution Discipline Committee gives an inmate notice of its decision, they shall also advise the inmate that the inmate may appeal the decision under Administrative Remedy Procedures (see Part 542 of this chapter). On appeals, the Warden, Regional Director, or General Counsel may approve, modify, or reverse any disciplinary action of the Unit Discipline Committee or Institution Discipline Committee but may not increase the sanctions imposed. On appeals, the Warden, Regional Director, or General Counsel shall consider:

(a) Whether the Unit Discipline Committee or the Institution Discipline Committee substantially complied with the regulations on inmate discipline;

(b) Whether the Unit Discipline Committee or Institution Discipline Committee based its decision on substantial evidence; and

(c) Whether an appropriate sanction was imposed according to the severity level of the Prohibited Act.

§ 541.18 Justification for placement in disciplinary segregation and review of inmates in disciplinary segregation.

(a) Except as provided in paragraph (b) of this section, an inmate may be placed in disciplinary segregation only by order of the Institution Discipline

Committee following a hearing in which the inmate has been found to have committed a prohibited act in the Greatest, High, or Moderate Category. The IDC may order placement in disciplinary segregation only when other available dispositions are inadequate to regulate an inmate's behavior within acceptable limits and when necessary for the control and management of behavior.

(b) The Warden may temporarily (not exceeding five days) move to a more secure cell, which may be in an area ordinarily set aside for disciplinary segregation and which therefore requires the withdrawal of privileges ordinarily afforded in administrative detention status, until a hearing before the Institution Discipline Committee can be held, an inmate who (1) is causing a serious disruption (threatening life, serious bodily harm, or property) in administrative detention, (2) cannot be controlled within the physical confines of administrative detention, and (3) upon advice of appropriate medical staff, does not require confinement in the institution hospital for mental or physical treatment, or who would ordinarily be housed in the institution hospital for mental or physical treatment, but who cannot safely be housed there because the hospital does not have a room or cell with adequate security provisions. The Warden may delegate this authority no further than to the official in charge of the institution at the time the move is necessary.

(c) The Institution Discipline Committee shall conduct a hearing and formally review the status of each inmate who spends seven continuous days in disciplinary segregation and thereafter shall review these cases on the record in the inmate's absence each week and shall conduct a hearing and formally review these cases at least once every 30 days. The inmate appears before the IDC at the 30-day hearings, unless the inmate waives the right to appear. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it may be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. Staff shall conduct a psychiatric or psychological assessment, including a personal interview, when disciplinary segregation continues beyond 30 days. The assessment, submitted to the Committee in a written report, shall address the inmate's adjustment to surroundings and the threat the inmate poses to self, staff and other inmates. Staff shall conduct a similar psychiatric or psychological assessment and report at subsequent one-month intervals if segregation continues for this extended period.

(d) The Institution Discipline Committee may release an inmate from disciplinary segregation earlier than the sanction initially imposed when the Committee finds that continuation in disciplinary segregation is no longer necessary to regulate the inmate's behavior within acceptable limits or for the control and management of behavior. The Committee may not increase any previously imposed sanction.

§ 541.19 Conditions of disciplinary segregation.

(a) Disciplinary segregation is the status of confinement of an inmate housed in a special housing unit in a cell either alone or with other inmates, separated from the general population. Inmates housed in disciplinary segregation have significantly fewer privileges than those housed in administrative detention.

(b) The Warden shall maintain for each segregated inmate basic living levels of decency and humane treatment, regardless of the purpose for which the inmate has been segregated. Living conditions may not be modified for the purpose of reinforcing acceptable behavior and different levels of living arrangements will not be established. Where it is determined necessary to deprive an inmate of a usually authorized item, staff shall prepare written documentation as to the basis for this action, and this document will be signed by the Warden, indicating his review and approval.

(c) The basic living standards for segregation are as follows:

(1) *Segregation Conditions.* The quarters used for segregation must be well ventilated, adequately lighted, ap-

propriately heated and maintained in a sanitary condition at all times. All cells must be equipped with beds. Strip cells may not be a part of the segregation unit. Any strip cells which are utilized must be a part of the medical facility and under the supervision and control of the medical staff.

(2) *Cell Occupancy.* Except in emergencies, the number of inmates confined to each cell or room may not exceed the number for which the space was designated. The Warden may approve temporary excess occupancy if he finds there is an emergency requiring this action.

(3) *Clothing and Bedding.* An inmate in segregation may wear normal institution clothing but may not have a belt. Staff shall furnish a mattress and bedding. Cloth or paper slippers may be substituted for shoes at the discretion of the Warden. An inmate may not be segregated without clothing, mattress, blankets and pillow, except when prescribed by the medical officer for medical or psychiatric reasons.

(4) *Food.* Staff shall ordinarily give a segregated inmate nutritionally adequate meals from the menu of the day for the institution. Staff may dispense disposable utensils when necessary.

(5) *Personal Hygiene.* Segregated inmates shall have the opportunity to maintain an acceptable level of personal hygiene. Staff shall provide toilet tissue, wash basin, tooth brush, eye glasses, shaving utensils, etc., as needed. Staff may issue a retrievable kit of toilet articles. Each segregated inmate shall have the opportunity to shower and shave at least three times a week, unless these procedures would present an undue security hazard. This security hazard will be documented and signed by the Warden, indicating his review and approval.

(6) *Exercise.* Staff shall permit each segregated inmate no less than four hours exercise each week. Exercise should be provided in four one-hour periods, on four different days, but if circumstances require, one-half hour periods are acceptable if the four-hour minimum and different days schedule is maintained. These provisions must be carried out unless compelling security or safety reasons dictate otherwise. Institution staff shall document these reasons. Exercise periods, not to exceed one week, may be withheld from an inmate by order of the Warden, upon recommendation of the Institution Discipline Committee. This recommendation may be made only following a hearing before the Committee, the hearing to be held in accordance with the provisions of § 541.15, following those provisions which are appropriate to these circumstances, and only upon a finding by the Committee that the actions of the segregated inmate pose a threat to the safety or health conditions of the unit.

(7) *Personal Property.* Institution staff shall ordinarily impound personal property.

(8) *Reading Material.* Staff may provide a reasonable amount of non-legal reading material, not to exceed five volumes at any one time, on a circulating basis. As to legal materials, see Part 543, Subpart B.

(9) *Supervision.* In addition to the direct supervision afforded by the unit officer, a member of the medical department and one or more responsible officers designated by the Warden shall see each segregated inmate daily, including weekends and holidays.

(10) *Correspondence and Visits.* As to correspondence privileges, see Part 540, Subpart B. Staff shall make reasonable effort to notify approved social visitors of any necessary restriction on ordinary visiting procedures so that they may be spared disappointment and unnecessary inconvenience. If ample time for correspondence exists, staff may place the burden of this notification to visitors on the inmate.' As to general visiting privileges, see Part 540, Subpart D. In respect to legal, religious, and privileged out-going mail, the relevant regulations must be followed by institution staff (see Parts 540, 543, and 548 of this chapter).

§ 541.20 Administrative detention.

Administrative detention is the status of confinement of an inmate in a special housing unit in a cell either by himself or with other inmates which serves to remove the inmate from the general population.

(a) *Placement in Administrative Detention.* The Warden may delegate authority to place an inmate in administrative detention to correctional supervisors, shift supervisors, or staff members of an inmate's unit or team. The Warden may place an inmate in administrative detention when the inmate is in holdover status (i.e., en route to a designated institution) during transfer, or is a new commitment pending classification. The Warden may also place an inmate in administrative detention when his continued presence in the general population poses a serious threat to life, property, self, staff, other inmates or to the security or orderly running of the institution and when the inmate:

(1) Is pending a hearing for a violation of institution regulations;

(2) Is pending investigation of a violation of institution regulations;

(3) Is pending investigation or trial for a criminal act;

(4) Is pending transfer;

(5) Requests admission to administrative detention for his own protection, or staff determines that admission to or continuation in administrative detention is necessary for the inmate's own protection (see § 541.21); or

(6) Is terminating confinement in disciplinary segregation and placement in general population is not prudent.

(i) In Security Level 1 through 5 and Administrative type (exception pretrial inmates) institutions, staff within 90 days of an inmate's placement in post-disciplinary detention shall either return the inmate to the general inmate population or effect a transfer to a more suitable institution.

(ii) In Security Level 6 institutions, staff is expected to adhere to the 90 day limit for an inmate's placement in post-disciplinary detention; however, the appropriate Regional Correctional Administrator for good and documented cause may approve two 30-day extensions.

(iii) The Assistant Director, Correctional Programs Division, shall review for purpose of making a disposition, the case of an inmate not transferred from post-disciplinary detention within the time frame specified in paragraph (a) of this section.

(iv) The appropriate Regional Director and the Assistant Director, Correctional Programs Division, shall review for purpose of making a disposition, the case of an inmate not transferred from post-disciplinary detention within the time frame specified in paragraph (b) of this section.

(b) *Memorandum Detailing Reasons for Placement.* The Warden shall prepare a memorandum detailing the reasons for placing an inmate in administrative detention, with a copy given to the inmate, provided institutional security is not compromised thereby. Staff shall deliver this memorandum to the inmate within 24 hours of his placement in administrative detention, unless this delivery is precluded by exceptional circumstances.

(c) *Review of Inmates Housed in Administrative Detention.* The Warden shall designate appropriate staff to review the status of inmates housed in administrative detention. The reviewing authority shall hold a hearing and formally review the status of each inmate who spends seven continuous days in administrative detention, and thereafter shall review these cases on the record (in the inmate's absence) each week, and shall hold a hearing and review these cases formally at least every 30 days. The inmate appears before the reviewing authority at the hearing unless the inmate waives the right to appear. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it may be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. Staff shall conduct a psychiatric or psychological assessment, including a personal interview, when administrative detention continues beyond 30 days. The assessment, submitted to the reviewing authority in a written report, should address the inmate's adjustment to his surroundings and the threat the inmate poses to self, staff and other inmates. Staff shall conduct a similar psychiatric or psychological assessment and report at subsequent one-month intervals should detention continue for this extended period. Administrative detention is to be used only for short periods of time except where an inmate needs long-term protection (see § 541.21). An inmate may be kept in administrative detention for longer term protection only if the need for such protection is documented by the reviewing authority. Provided institutional security is not compromised, the inmate shall receive at each formal review a written copy of staff's decision and the basis for this finding. The reviewing authority shall release an inmate from administrative detention when reasons for placement cease to exist.

(d) *Conditions of Administrative Detention.* The basic level of conditions as described in § 541.19 for disciplinary segregation also apply to administrative detention. If consistent with available resources and the security needs of the unit, the Warden shall give an inmate housed in administrative detention the same general privileges given to inmates in the general population. Unless there are compelling reasons to the contrary, institutions shall provide commissary privileges and reasonable amounts of personal property. Exercise periods, at a minimum, will meet the level established for disciplinary segregation and will exceed this level where resources are available. The Warden shall give an inmate in administrative detention visiting and correspondence privileges in accordance with Part 540 of this chapter.

§ 541.21 Protection cases.

(a) Staff may consider the following categories of inmates as protection cases.

(1) Victims of inmate assaults;

(2) Inmate informants;

(3) Inmates who have received inmate pressure to participate in sexual activity;

(4) Inmates who seek protection through detention, claiming to be former law enforcement officers, informants, or others in sensitive law enforcement positions, whether or not there is official information to verify the claim;

(5) Inmates who have previously served as inmate gun guards, dog caretakers, or in similar positions in state or local correctional facilities;

(6) Inmates who refuse to enter the general population because of alleged pressures from other unidentified inmates;

(7) Inmates who will not provide, and as to whom staff cannot determine, the reason for refusal to return to the general population;

(8) Inmates about whom staff has good reason to believe the inmate is in serious danger of bodily harm.

(b) Inmates who are placed in administrative detention for protection, but not at their own request or beyond the time when they feel they need to be detained for their own protection, are entitled to a hearing, no later than seven days from the time of their admission (or from the time of their detention beyond their own consent). This hearing is conducted in accordance with the procedural requirements of § 541.15, as to advance written notice, staff representation, right to make a statement and present documentary evidence, to request witnesses, to be present throughout the hearing, and as to making a record of the proceedings.

(c) Ordinarily, staff may place an inmate in administrative detention as provided in paragraph (a) of this section relating to protection cases, for a period not to exceed 90 days. Staff shall clearly document in the record the reasons for any extension beyond this 90 day period.

(d) Where appropriate, staff shall first attempt to place the inmate in the general population of their particular facility. Where inappropriate, staff shall clearly document the reason(s) and refer the case, with all relevant material, to their Regional Director, who, upon review of the material, may order the transfer of a protection case.

§ 541.22 Disciplinary procedures for Federal Community Treatment Centers.

The following exceptions to the general disciplinary procedures for Bureau of Prisons institutions apply solely to Federal Community Treatment Centers.

(a) *Institution Discipline Committee.* Each Federal Community Treatment Center must have a single Institution Discipline Committee composed of at least one staff member appointed by the director of the center. No member need be of department head level. No member of the Institution Discipline Committee may be the reporting or investigating officer or have played any significant part in having the charge(s) referred to the Institution Discipline Committee. Federal Community Treatment Centers need not hold initial hearings or establish unit discipline committees with initial hearing authority but may have only one discipline committee, the Institution Discipline Committee.

(b) *Witnesses.* The Institution Discipline Committee shall permit an inmate appearing before the Committee to request the Committee to call witnesses from outside the Center who are willing to appear before the Committee at their own expense and whose presence at the hearing would not pose a serious threat to the security of the Center. Witnesses whose testimony would be repetitious or irrelevant to the charge(s) or disposition(s) need not be called. When the Committee refuses a request for an outside witness, the Committee shall clearly document the reason(s) for refusing this requested witness. The Committee shall liberally accept written statements from requested witnesses who do not appear.

(c) *Offenders Programmed in the Center Pursuant to Pub. L. 91-492 (Probationers, Parolees, or Mandatory Releases).* Center staff shall forward reports of misconduct by an offender programmed in the center pursuant to Pub. L. 91-492 to the appropriate agency (Probation Officer or Parole Commission) for disposition which that agency considers appropriate. This offender may not be the subject of disciplinary action within the center until the appropriate agency has been contacted. Center staff shall make immediate notification when the misconduct is serious and arrangements for removal from the center may be necessary for the protection of life or property.

(d) *Escapes or Disappearances from Federal Community Treatment Centers.* When an inmate is not where he is scheduled to be, and when the center staff has made reasonable efforts to contact the inmate, center staff shall declare the inmate to be in escape status. Staff shall take further action following the guidelines under § 541.12. Staff shall effect total resolution of the incident, to the point of holding the hearing in the inmate's absence.

(e) *Use of Part Time Employees or Other Federal Employees in the Disciplinary Process.* With the exception of sitting as a member of the Institution Discipline Committee, part time employees or other federal employees (U.S. Probation Officer, U.S. Marshal, etc.) may be used in any stage of the disciplinary process where there is an insufficient number of full time staff available.

Subpart C—[Reserved]

Subpart D—Control Unit Programs

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

SOURCE: 44 FR 38260, June 29, 1979, unless otherwise noted.

§ 541.40 Purpose and scope.

(a) In an effort to maintain a safe and orderly environment within its institutions, the Bureau of Prisons operates Control Unit Programs intended to place into a separate unit those inmates who are unable to function in a less restrictive environment without being a threat to others or to the orderly operation of the institution. The Bureau of Prisons provides written criteria for the:

(1) Referral of an inmate for possible placement within the Control Unit;

(2) Selection of an inmate for placement within the Control Unit;

(3) Regular review of an inmate while housed in the Control Unit; and

(4) Release of an inmate from the Control Unit.

(b) The Bureau of Prisons provides an inmate confined within the Control

Unit the opportunity to participate in programs and activities restricted as necessary to protect the security, good order, or discipline of the unit.

§ 541.41 Institutional referral.

(a) The Warden shall submit a recommendation for referral of an inmate for placement in the Control Unit to the Regional Director in the region where the inmate is located.

(b) The Warden shall consider the following factors in a recommendation for Control Unit placement.

(1) Any incident during confinement in which the inmate has caused injury to other persons.

(2) Any incident in which the inmate has expressed threats to the life or well-being of other persons.

(3) Any incident involving possession by the inmate of deadly weapons or dangerous drugs.

(4) Any incident in which the inmate is involved in a disruption of the orderly operation of a prison, jail or other correctional institution.

(5) Escapes and escape attempts. For referral to a Control Unit in a Security Level 6 institution, an inmate may not be considered solely on the basis of escape attempts, or incidents involving possession of escape tools or plans; however, if injury or threat to life or use of deadly weapons occurs in an escape attempt, the inmate may be referred to the Control Unit.

(6) The nature of the offense for which committed. For referral to a Control Unit in a Security Level 6 institution, an inmate may not be considered solely on the nature of the crime which resulted in that inmate's incarceration; however, the nature of the crime may be considered in combination with other factor(s), as described in paragraph (b) of this section.

(c) The Warden may not refer an inmate for placement in the Control Unit:

(1) If the inmate shows evidence of significant mental disorder or major physical disabilities as documented in a mental health evaluation or a physical examination.

(2) On the basis that the inmate is a protection case, e.g., a homosexual, an informant, etc., unless the inmate meets other criteria as described in paragraph (b) of this section.

(3) Solely on the basis of escape attempts, or incidents involving possession of escape tools or plans if the referral is to a Control Unit in a Security Level 6 institution; for that referral, however, if injury or threat to life or use of deadly weapons occurs in an escape attempt, a requisite factor will be met, to warrant consideration for a recommended referral to the Control Unit.

(4) On the basis that the inmate is a protection case, e.g., a homosexual, an informant, etc., unless the inmate meets other criteria as described in paragraph (b) of this section.

[44 FR 38260, June 29, 1979, as amended at 46 FR 34547, July 1, 1981]

§ 541.42 Designation of Hearing Administrator.

(a) The Regional Director in the region where the inmate is located shall review the institution's recommendation for referral of an inmate for placement in the Control Unit. If the Regional Director concurs with the recommendation, the Regional Director shall submit a written request to the Regional Director, North Central Region. The Regional Director, North Central Region shall designate a person in the Regional Office to review the referral material and to conduct a hearing on the appropriateness of an inmate's placement in the Control Unit.

(b) The Hearing Administrator shall have the following qualifications:

(1) Correctional experience, including institutional work with inmates, processing of inmate disciplinary actions, significant institutional experience in observing and evaluating inmate adjustment and disruptive behavior, and knowledge of the options available in the Bureau of Prisons for dealing with such conduct;

(2) Lack of former personal involvement in an Institution Disciplinary Committee action involving the particular inmate referred; and

(3) Familiarity with Bureau of Prisons policies and operations, including the criteria for placement of inmates

in different institutions and in the Control Unit.

[46 FR 34547, July 1, 1981]

§ 541.43 Hearing procedure.

(a) The Hearing Administrator shall provide a hearing to an inmate recommended for placement in the Control Unit. The hearing ordinarily shall take place at the recommending or sending institution.

(b) The hearing shall proceed as follows.

(1) Staff shall provide an inmate with advance written notice of the hearing and a copy of this rule at least 24 hours prior to the hearing. The notice will advise the inmate of the specific act(s) or other evidence which forms the basis of the recommendation that the inmate be transferred to the Control Unit, unless such evidence would likely endanger staff or others. If an inmate is illiterate, staff shall explain the notice and this rule to the inmate and document that this explanation has occurred.

(2) The inmate has the right to be present throughout the hearing, except where institutional security is jeopardized. The Hearing Administrator may conduct a hearing in the absence of the inmate when the inmate refuses to appear. The Hearing Administrator shall document an inmate's refusal to appear, or other reason for non-appearance, in the record of the hearing.

(3) The Hearing Administrator shall provide an inmate the service of a full time staff member to represent the inmate, if the inmate so desires. The Hearing Administrator shall document in the record of the hearing an inmate's request for, or refusal of staff representation. The inmate may select a staff representative from the local institution. If the selected staff member declines or is unavailable, the inmate has the option of selecting another representative or, in the case of an absent staff member, of waiting a reasonable period (determined by the Hearing Administrator) for the staff member's return, or of proceeding without a staff representative. When an inmate is illiterate, the Warden shall provide a staff representative. The staff representative shall be available to assist the inmate and, if the inmate desires, shall contact witnesses and present favorable evidence at the hearing. The Hearing Administrator shall afford the staff representative adequate time to speak with the inmate and to interview available witnesses.

(4) The inmate is entitled to present documentary evidence and to have witnesses appear, provided that calling witnesses would not jeopardize or threaten institutional security or individual safety, and further provided that the witnesses are available at the institution where the hearing is being conducted.

(i) The evidence to be presented must be material and relevant to the issue as to whether the inmate can and would function within any prison population without being or posing a threat to staff or others or to the orderly operation of the institution. The Hearing Administrator may not consider evidence offered to reverse or repeal a prior finding of a disciplinary violation.

(ii) Repetitive witnesses need not be called. Staff who recommend placement in the Control Unit are not required to appear, provided their recommendation is fully explained in the record. Staff who were involved, in any capacity, in former disciplinary proceedings need not be called as to their involvement in those proceedings, since this hearing is not to go over the factual basis for prior actions which have been decided.

(iii) When a witness is not available within the institution, or not permitted to appear, the inmate may submit a written statement by that witness. The Hearing Administrator shall, upon the inmate's request, postpone any decision following the hearing for a reasonable time to permit the obtaining and forwarding of written statements.

(iv) The Hearing Administrator shall document in the record of the hearing the reasons for declining to permit a witness or to receive documentary evidence.

[44 FR 38260, June 29, 1979, as amended at 46 FR 34547, July 1, 1981]

§ 541.44 Decision of the hearing administrator.

(a) At the conclusion of the hearing and following review of all material related to recommendation for placement of an inmate in the Control Unit, the Hearing Administrator shall prepare a written decision as to whether this placement is warranted. The Hearing Administrator shall:

(1) Prepare a summary of the hearing and of all information presented upon which the decision is based; and

(2) Indicate the specific reasons for the decision, to include a description of the act, or series of acts, or evidence on which the decision is based.

(b) The Hearing Administrator shall advise the inmate in writing of the decision. The inmate shall receive the information described in paragraph (a) of this section unless it is determined that the release of this information could pose a threat to individual safety, or institutional security, in which case that limited information may be withheld. The Hearing Administrator shall advise the inmate that the decision will be submitted for review of the Executive Panel. The Hearing Administrator shall advise the inmate that, if the inmate so desires, the inmate may submit an appeal of the Hearing Administrator's decision to the Executive Panel. This appeal, with supporting documentation and reasons, must be filed within five working days of the inmate's receipt of the Hearing Administrator's decision.

(c) The Hearing Administrator shall send the decision, whether for or against placement in the Control Unit, and supporting documentation to the Executive Review Panel. Ordinarily this is done within 20 working days after conclusion of the hearing. Any reason for extension is to be documented.

§ 541.45 Executive panel review and appeal.

The Executive Panel is composed of the Regional Director of the region where the Control Unit is located to which referral is being considered and the Assistant Director, Correctional Programs Division.

(a) The Executive Panel shall review the decision and supporting documentation of the Hearing Administrator and, if submitted, the information contained in an inmate's appeal. The Panel shall accept or reject the Hearing Administrator's decision within fifteen working days of its receipt, unless for good cause there is reason for delay, which shall be documented in the record.

(b) The Executive Panel shall provide a copy of their decision to the Warden at the institution to which the inmate is to be transferred, to the inmate, to the referring Warden, and to the Hearing Administrator.

(c) An inmate may appeal a decision of the Executive Panel, through use of the Administrative Remedy Procedure, directly to the Office of General Counsel, Bureau of Prisons.

§ 541.46 Programs and services.

The Warden shall provide the following services to the Control Unit inmate. These services must be provided unless compelling security or safety reasons dictate otherwise. These reasons will be documented and signed by the Warden, indicating the Warden's review and approval.

(a) *Education:* The Warden shall assign a member of the education staff to the Control Unit on at least a part-time basis to assist in developing an educational program to fulfill each inmate's academic needs. Study courses are provided for all levels, i.e., adult basic education, GED programs, correspondence courses, areas of special interest, and college courses. The education staff member is also ordinarily a member of the Control Unit team.

(b) *Work Assignments:* Staff may assign inmates to a work assignment, such as range orderly. The manner in which these duties are carried out will reflect the inmate's unit adjustment, and will assist staff in evaluating the inmate.

(c) *Industries:* If an industry program exists in the Control Unit, each inmate participating in this program may earn industrial good time and industrial pay, subject to the regulations of Federal Prison Industries, Inc. The industry program is supervised by an industry foreman. The Control Unit team will determine when or if an industry assignment is appropriate for each inmate who submits a request for possible assignment to industries work.

(d) *Legal.* The Control Unit legal library is equipped with basic legal reference books, table and chair, typewriter, paper and carbon. The library is offered to each inmate, upon request and in rotation.

(e) *Recreation:* The recreation program in the control unit shall include the following requirements.

(1) Each inmate shall have the opportunity to receive a minimum of seven hours weekly recreation and exercise out of the cell.

(2) Staff shall provide recreation by a rotation of participants during the day. When an inmate refuses recreation, staff shall note this fact on the inmate's recreation form.

(3) An inmate who desires to recreate with another inmate or other inmates may submit a request to do so. The inmates involved must all sign the form, indicating that they are willing to recreate together. Before release from the unit, each inmate must have shown, for a significant period of time, the ability to recreate at the same time and cooperatively with others.

(4) Staff shall offer outdoor recreation to inmates who desire this, weather permitting. Staff shall provide foul weather gear for inmates who choose to recreate outdoors during inclement weather.

(5) Staff shall provide various games and exercise materials as consistent with custodial considerations. Inmates who alter or intentionally damage recreation equipment may be deprived of the use of that equipment in the future.

(f) *Casemanagement Services:* The casemanager is responsible for all areas of casemanagement including preparation of the visiting list, notarizing documents, preparation of various reports, and other casemanagement duties. The casemanager is ordinarily a member of the Control Unit team.

(g) *Counselor Services:* The unit counselor handles phone call requests, special concerns and requests of inmates, requests for administrative remedy forms, is available for consultation, and is available for counseling as recommended in the mental health evaluation (see subsection "i"—Mental Health Services).

(h) *Medical Services:* A member of the medical staff shall visit the Control Unit inmates daily. A physician will visit the unit as the need arises. Should an illness require evaluation or treatment which cannot be administered in the unit, and upon the request of the medical doctor or dentist, staff shall escort the inmate patient to the institution hospital.

(i) *Mental Health Services:* During the first 30-day period in the Control Unit, staff shall schedule the Control Unit inmate for a complete psychological evaluation conducted by a staff psychologist. Additional individual evaluations shall occur every 30-days. The psychologist shall perform and/or supervise needed psychological services. Psychiatric services will be provided when necessary. Inmates requiring prescribed psychotropic medication are not ordinarily housed in the Control Unit.

(j) *Religion:* Staff shall issue religious materials upon request, limited by security consideration and housekeeping rules in the unit. This material may come from an inmate's personal property or from the chaplain's office. The institutional chaplains shall make weekly visits to the Control Unit, and additional visits as needed. While individual prayer and/or worship is allowed in the Control Unit, religious assemblies or group meetings are not allowed.

(k) *Food Service and Personal Hygiene:* Staff shall provide food services and personal hygiene care consistent with the requirements of the current rule regarding Special Housing Units.

(l) *Correspondence:* Inmates confined in the Control Unit are provided correspondence privileges in accordance with the Bureau of Prisons' rule on Inmate Correspondence (see 28 CFR, Part 540).

(m) *Visiting:* Visits for inmates confined in the Control Unit are conducted in a controlled visiting area, separated from regular visiting facilities. Staff shall allot a minimum of 16 hours per month visiting time to the

Control Unit inmate. The number of consecutive hours visiting on a particular day may be limited by the number of visitors waiting to visit. All visitors must be on the inmate's approved visiting list.

(n) *Commissary:* Staff shall establish a commissary purchase schedule. The amount of money Control Unit inmates may spend per month is comparable to what inmates residing in the general population may spend for commissary and hobbycraft items. Staff may limit commissary items to ensure the safety and security of the unit.

[44 FR 38260, June 29, 1979, as amended at 46 FR 34547, July 1, 1981]

§ 541.47 Admission to Control Unit.

Staff shall provide an inmate admitted to the Control Unit with:

(a) Notice of the expected duration of the inmate's confinement in the Control Unit;

(b) Notice of the type of personal property which is allowable in the unit (items made of glass or metal will not be permitted);

(c) A summary of the guidelines and disciplinary procedures applicable in the unit;

(d) An explanation of the activities of the Control Unit;

(e) The expectations of the inmate's involvement in Control Unit activities; and

(f) The criteria for release from the unit, and how those criteria specifically relate to this confinement period in the unit and any specific requirements in the inmate's individual case.

[46 FR 34548, July 1, 1981]

§ 541.48 Review of Control Unit placement.

(a) Unit staff shall evaluate informally and daily an inmate's adjustment within the Control Unit. Once every 30 days, the Control Unit team, comprised of the Control Unit Manager, and other members designated by the Warden (ordinarily to include the case manager and education staff member assigned to the unit) shall meet with an inmate in the Control Unit. The unit team shall make an assessment of the inmate's progress within the unit and may make a recommendation as to readiness for release after considering the inmate's:

(1) Unit status;

(2) Adjustment; and

(3) Readiness for release from the unit. (See § 541.49(a));

(b) The Warden shall serve as the review authority at the institutional level for unit team actions.

(c) An inmate may appeal the Warden's decision to the Executive Panel within five working days of receipt of that decision.

(d) At least once every 60 to 90 days, the Executive Panel shall review the status of an inmate in the Control Unit to determine the inmate's readiness for release from the Unit. The Executive Panel shall consider those factors specified in § 541.49(a), along with any recommendations by the unit team and Warden.

The decision of the Executive Panel is communicated to the inmate. Ordinarily, the inmate is interviewed in person at this review. If the inmate refuses to appear for this review, or if there is other reason for not having an in-person review, this will be documented.

(e) An inmate may appeal a decision of the Executive Panel, through use of the Administrative Remedy Procedure, directly to the Office of General Counsel, Bureau of Prisons.

[44 FR 38260, June 29, 1979, as amended at 46 FR 34548, July 1, 1981]

§ 541.49 Release from the Control Unit.

(a) Either the unit team with approval of the Warden, or the Executive Panel may release an inmate from the Control Unit. The following factors are considered in the evaluation of an inmate's readiness for release from the Control Unit:

(1) Relationship with other inmates and staff members, which demonstrates that the inmate is able to function in a less restrictive environment without posing a threat to others or to the orderly operation of the institution;

(2) Involvement in work and recreational activities and assignments;

(3) Adherence to institution guidelines and Bureau of Prisons rules and policy;

(4) Personal grooming and cleanliness; and

(5) Quarters sanitation.

(b) An inmate released from the Control Unit may be returned:

(1) To the institution from which the inmate was originally transferred;

(2) To another institution;

(3) Into the general population of the institution which has the Control Unit.

[44 FR 38260, June 29, 1979, as amended at 46 FR 34548, July 1, 1981]

PART 542—ADMINISTRATIVE REMEDY

Subpart A—[Reserved]

Subpart B—Administrative Remedy Procedure for Inmates

Sec.
542.10 Purpose and scope.
542.11 Responsibility.
542.12 Issues improperly filed.
542.13 Initial filing.
542.14 Remedy processing.
542.15 Appeals.
542.16 Index and access.

AUTHORITY: 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039; 28 U.S.C. 509; 28 CFR 0.95-0.99.

SOURCE: 44 FR 62250, Oct. 29, 1979, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Administrative Remedy Procedure for Inmates

§ 542.10 Purpose and scope.

The Bureau of Prisons has established an Administrative Remedy Procedure through which an inmate may seek formal review of a complaint which relates to any aspect of his imprisonment if less formal procedures have not resolved the matter. This procedure applies to all inmates confined in Bureau of Prisons institutions, but does not apply to inmates confined in non-federal facilities.

§ 542.11 Responsibility.

(a) The Warden, Regional Director, and General Counsel are responsible for the operation of the Administrative Remedy Procedure at the institution, regional and central office levels, respectively, and shall:

(1) Establish procedures for receiving, reviewing, investigating and responding to complaints or appeals submitted by an inmate;

(2) Acknowledge receipt of a complaint or appeal by returning to the inmate a signed receipt;

(3) Conduct an investigation into each complaint or appeal;

(4) Respond to and sign all complaints or appeals filed at their level. This responsibility may not be delegated further.

(b) Inmates have the responsibility to present complaints in good faith and in an honest and straightforward manner.

§ 542.12 Issues improperly filed.

Filings will not be accepted under the Administrative Remedy Procedure for tort claims, Inmate Accident Compensation claims, Freedom of Information or Privacy Act requests, or complaints on behalf of other inmates.

§ 542.13 Initial filing.

(a) *Informal resolution.* Inmates shall informally present their complaints to staff, and staff shall attempt to informally resolve any issue before an inmate files a request for Administrative Remedy. The Warden may establish local procedures to ensure that attempts at informal resolution are made.

(b) *Filing.* If an inmate is unable to informally resolve his complaint, he may file a formal written complaint, on the appropriate form, within fifteen (15) calendar days of the date on which the basis of the complaint occurred. Where the inmate demonstrates a valid reason for delay, an extension in filing time shall be allowed. An extension in the time for filing shall be allowed when an inmate indicates and staff verify that a response to the inmate's request for copies of dispositions requested under section 8 of this Program Statement (§ 542.16) has not been received. An inmate may obtain assistance in preparation of his complaint or appeal from other inmates or from institution staff.

(c) *Sensitive complaints.* If the inmate believes the complaint is sensitive and that he would be adversely affected if the complaint became known at the institution, he may file the complaint directly with the Regional Director. The inmate must explain, in writing, the reason for not filing the complaint at the institution. If the Regional Director agrees that the complaint is sensitive, he shall accept and respond to the complaint. If the Regional Director does not agree that the complaint is sensitive, he shall advise the inmate in writing of that determination, without a return of the complaint. The inmate may pursue the matter by filing the complaint locally with the Warden.

(d) *Control Unit Appeals.* Appeals relative to Control Unit placement may be filed directly with the General Counsel.

[44 FR 62250, Oct. 29, 1979, as amended at 44 FR 76726, Dec. 27, 1979]

§ 542.14 Remedy processing.

Response time limits. A complaint or appeal is considered filed when the receipt is issued. Once filed, response shall be made by the Warden within fifteen (15) calendar days, by the Regional Director within thirty (30) calendar days, and by the General Counsel within thirty (30) calendar days. If the complaint is determined to be of an emergency nature which threatens the inmate's immediate health or welfare, the Warden shall respond within 48 hours of receipt of the complaint. If the period of time for response to a complaint or appeal is insufficient to make an appropriate decision, the time for response may be extended once by the same amount of time as originally allowed for response. Staff shall inform the inmate of this extension in writing. If the inmate does not receive a response within the time allotted for reply, including extension, the inmate may consider the absence of a response to be a denial at that level. Staff shall, however, respond to all filed complaints.

§ 542.15 Appeals.

Filing. If an inmate is not satisfied with the Warden's response, that response may be appealed on the appropriate form to the Regional Director within twenty (20) calendar days of the date of the Warden's response. If the inmate is not satisfied with the Regional Director's response, that response may be appealed on the appropriate form to the General Counsel within thirty (30) calendar days from the date of the Regional Director's response. Where a valid reason for delay is stated by an inmate these time limits may be extended. Appeal to the Office of General Counsel is the final administrative appeal in the Bureau of Prisons.

§ 542.16 Index and access.

Disposition access. Inmates and members of the public may request access to Administrative Remedy indexes and to responses by case number at the location where they are retained. Copies, with names and other identifiers deleted, may be inspected during regular office hours or may be purchased.

PART 543—LEGAL MATTERS

Subpart A—[Reserved]

Subpart B—Inmate Legal Activities

Sec.
543.10 Purpose and scope.
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543.12 Retention of attorneys.
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543.16 Other paralegals, clerks, and legal assistants.

Subpart C—Claims Under the Federal Tort Claims Act

543.30 Purpose and scope.
543.31 Procedures.
543.32 Appreciation and depreciation.

Subpart A—[Reserved]

Subpart B—Inmate Legal Activities

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

SOURCE: 44 FR 38263, June 29, 1979, unless otherwise noted.

§ 543.10 Purpose and scope.

The Bureau of Prisons affords an inmate reasonable access to legal materials and counsel, and reasonable opportunity to prepare legal documents. The Warden shall establish an inmate law library, and procedures for access to legal reference materials and to legal counsel, and for preparation of legal documents.

[46 FR 59509, Dec. 4, 1981]

§ 543.11 Legal research and preparation of legal documents.

(a) The Warden shall make materials in the inmate law library available whenever practical, including evening and weekend hours. The Warden shall allow an inmate a reasonable amount of time, ordinarily during the inmate's leisure time, to do legal research and to prepare legal documents. Where practical, the Warden shall allow preparation of documents in living quarters during an inmate's leisure time.

(b) The Warden shall periodically ensure that materials in each inmate law library are kept intact and that lost or damaged materials are replaced.

(c) Staff shall advise an inmate of rules and local procedures governing use of the inmate law library. Unauthorized possession of library materials by an inmate constitutes a prohibited act, generally warranting disciplinary action (see Part 541 of this chapter).

(d) An inmate may receive or purchase law materials from outside the institution, but the Warden may reject material if there is a compelling reason in the interest of institution security, good order, or discipline. The Warden may limit for housekeeping reasons the amount of legal materials an inmate may accumulate. An inmate may receive hardcover law books from publishers or bookstores. An inmate may receive softcover material (for example, paperback books, newspapers, magazines) from any source. An inmate may receive court or legal documents from court clerks or judges or from his attorney through the mail or incident to visiting. Staff may inspect these documents for contraband but may not read them if properly presented.

(e) An inmate is responsible for submitting his documents to court. Institution staff who are authorized to administer oaths shall be available to provide necessary witnessing of these documents, as requested by inmates and at times scheduled by staff.

(f) Unless the institution has an active, ongoing legal aid program, the Warden shall allow an inmate the assistance of another inmate during their leisure time for purposes of legal research and preparation of legal documents. The Warden may impose limitations on this assistance in the interest of institution security, good order, or discipline.

(g) The institution staff shall, upon an inmate's request and at times scheduled by staff, duplicate legal documents if the inmate demonstrates that more than one copy must be submitted to court and that the duplication cannot be accomplished by use of carbon paper. The inmate shall bear the cost, and the duplication shall be done so as not to interfere with regular institution operations. Staff may waive the cost if the inmate is without funds or if the material to be duplicated is minimal, and the inmate's requests for duplication are not large or excessive.

(h) Unless clearly impractical, the Warden shall allow an inmate preparing legal documents to use a typewriter, or, if the inmate cannot type, to have another inmate type his documents. The Warden may allow the inmate to hire a public stenographer to type documents outside the institution, but the institution may not assume the expense of hiring the public stenographer. Staff shall advise the inmate of any delay in the typing of which they have received notice.

(i) The Warden shall give special time allowance for research and preparation of documents to an inmate who demonstrates a requirement to meet an imminent court deadline. Otherwise, each inmate shall continue his regular institutional activities without undue disruption by legal activities.

(j) With consideration of the needs of other inmates and the availability of staff and other resources, the Warden shall provide an inmate confined in disciplinary segregation or administrative detention a means of access to legal materials, along with an opportunity to prepare legal documents. The Warden shall allow an inmate in segregation or detention a reasonable amount of personal legal materials. In no case shall the amount of personal legal materials be such as to pose a fire, sanitation, security, or housekeeping hazard.

§ 543.12 Retention of attorneys.

(a) The Warden shall allow an inmate to contact and retain attorneys. With the written consent of the inmate, staff may advise an attorney of the inmate's available funds. Staff may not interfere with selection and retention of attorneys if the inmate has attained majority and is mentally competent. If the inmate is a mental incompetent or a minor, the Warden shall refer to the inmate's guardian or to the appropriate court all matters concerning the retention and payment of attorneys.

(b) The Bureau of Prisons may not act as guarantor or collector of fees. As to correspondence with attorneys and telephone calls to attorneys, see Part 540 of this chapter.

§ 543.13 Visits by attorneys.

(a) The Warden shall, under the conditions of this section, permit visits by the retained, appointed, or prospective attorney of an inmate or by an attorney who wishes to interview an inmate as a witness.

(b) The Warden generally may not limit the frequency of attorney visits since the number of visits necessary is dependent upon the nature and urgency of the legal problems involved. The Warden shall set the time and place for visits, which ordinarily take place during regular visiting hours. Attorney visits shall take place in a private conference room, if available, or in a regular visiting room in an area and at a time designed to allow a degree of privacy. The Warden may make exceptions according to local conditions or for an emergency situation demonstrated by the inmate or visiting attorney.

(c) The attorney shall make an advance appointment for the visit through the Warden prior to each visit; however, the Warden shall make every effort to arrange for a visit when prior notification is not practical.

(d) The Warden may require an attorney to indicate where he is licensed as an attorney and how that fact may be verified. Prior to each appointment or visit, the Warden shall require each attorney to identify himself and to confirm that he wishes to visit an inmate who has requested his visit or whom he represents or whom he wishes to interview as a witness. The Warden may not ask the attorney to state the subject matter of the law suit or interview. If there is any question about the identity of the visitor or his qualification as an attorney in good standing, the Warden shall refer the matter to the Regional Counsel.

(e) Staff may not subject visits between an attorney and an inmate to auditory supervision. The Warden may permit tape recordings to be used by an attorney during the course of a visit only if the attorney states in writing in advance of the interview that the sole purpose of the recording is to facilitate the attorney-client or attorney-witness relationship.

(f) The Warden may, at any time, subject an attorney to a search of his person and belongings for the purpose of ascertaining if contraband is present, as a condition of visiting an inmate.

§ 543.14 Limitation or denial of attorney visits and correspondence.

(a) An act by an attorney which violates Bureau regulations or institution guidelines and which threatens the security, good order, or discipline of the institution is grounds for limitation or denial by the Warden of the attorney's privileged visitation and correspondence rights. Acts by an attorney which may warrant such limitation or denial include, for example the following:

(1) A false statement as to the attorney's identity or qualifications;

(2) A plan, attempt, or act to introduce contraband into the institution;

(3) A conspiracy to commit, an attempt to commit, or the actual commission of an act of violence within an institution; and

(4) Encouraging an inmate to violate the law, Bureau of Prisons rules, or local implementing guidelines.

(b) Unless the breach of regulations is extreme or repeated, limitation rather than a denial of visitation or correspondence rights is proper, especially where the inmate is represented by the attorney and is confronted with a court deadline. For example, the Warden may subject an attorney to a search of his person and belongings or may permit the attorney only nonprivileged correspondence. The Warden shall also consider referral of the matter to the state agency regulating the attorney's professional conduct.

(c) An act by an inmate in violation of Bureau regulations or institution guidelines warrants a limitation by the Warden of the inmate's correspondence or visiting rights with attorneys only if necessary to protect institution security, good order, or discipline. The Warden may not deny correspondence or visiting rights with attorneys generally.

(d) The attorney may appeal any limitation or denial by the Warden of attorney visits or correspondence rights to the Regional Director. The inmate affected may appeal through the Administrative Remedy Procedures.

§ 543.15 Legal aid program.

(a) A legal aid program which is funded or approved by the Bureau is expected to provide a broad range of legal assistance to inmates. Staff shall allow these programs generally to operate with the same independence as privately retained attorneys. The Warden shall refer a request or decision to terminate or restrict a program, or individual participants in a program, to the Regional Counsel.

(b) In order to promote the inmate-program relationship, the Warden shall give those students or legal assistants working in legal aid programs the same status as attorneys with respect to visiting and correspondence except where specific exceptions are made in this section and in Part 540 of this chapter.

(c) An attorney or law school professor shall supervise students and legal assistants participating in the program. The supervisor shall provide the Warden with a signed statement accepting professional responsibility for acts of each student or legal assistant affecting the institution. The Warden may require each student or legal assistant to complete and sign a personal history statement and a pledge to abide by Bureau regulations and institution guidelines. If necessary to maintain security or good order in the institution, the Warden may prohibit a student or legal assistant from visiting or corresponding with an inmate.

§ 543.16 Other paralegals, clerks, and legal assistants.

(a) The Bureau of Prisons recognizes the use of assistants by attorneys to perform legal tasks and, with proper controls and exceptions enumerated in this section and in Part 540 of this chapter, accords such assistants the same status as attorneys with respect to visiting and correspondence.

(b) The attorney who employs an assistant and who wishes the assistant to visit or correspond with an inmate on legal matters shall provide the Warden with a signed statement including:

(1) Certification of the assistant's ability to perform in this role and awareness of the responsibility of this position;

(2) A pledge to supervise the assistant's activities; and

(3) Acceptance of personal and professional responsibility for all acts of the assistant which may affect the institution, its inmates, and staff. The Warden may require each assistant to fill out and sign a personal history statement and a pledge to abide by

Bureau regulations and institution guidelines. If necessary to maintain security or good order in the institution, the Warden may prohibit a legal assistant from visiting or corresponding with an inmate.

Subpart C—Claims Under the Federal Tort Claims Act

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039; 28 U.S.C. 509, 510, 1346(b), 2671-80; 28 CFR 0.95-0.99, 0.172, 14.1-11.

Source: 46 FR 24899, May 1, 1981, unless otherwise noted.

§ 543.30 Purpose and scope.

The Bureau of Prisons shall consider administrative claims asserted under the Federal Tort Claims Act in accordance with the provisions of 28 CFR 14.1 et seq. The Director of the Bureau of Prisons is delegated authority by 28 CFR 0.96 and 0.172 to consider, adjust, determine, compromise, settle, and pay federal tort claims if the amount of a proposed adjustment, compromise, settlement, or award does not exceed $2500. In accordance with the provisions of 28 CFR 0.97, the Director, Bureau of Prisons, has redelegated this authority to Regional Counsel when the claim's proposed disposition does not exceed $500 and to the General Counsel, Central Office, when the proposed disposition does not exceed $2500.

§ 543.31 Procedures.

(a) Staff shall provide the necessary forms to an individual who wishes to file a claim.

(b) Claims are to be submitted first to the Regional Office in the region where the basis for the claim occurred (See 28 CFR Part 503).

(c) Claims are ordinarily investigated locally (where the basis for the claim occurred).

(d) The Warden shall designate a staff member to act as Investigating Officer.

(e) The Warden shall submit the Investigative Report, with the Warden's recommendations, to Regional Counsel. The Regional Counsel shall consider the merits of the tort claim, and is authorized to proposed to the claimant a settlement not to exceed $500 or to otherwise dispose of the claim.

(f) If the appropriate disposition appears to be a settlement offer in excess of $500, Regional Counsel shall forward the claim and institutional and regional recommendations to the Office of General Counsel, Central Office. The General Counsel shall consider the merits of the tort claim and is authorized to propose a settlement to the claimant not to exceed $2500 or to otherwise dispose of the claim.

(g) Either the Regional Counsel or General Counsel may deny any claim filed under the Federal Tort Claims Act, regardless of the amount of the claim. The denial of a claim constitutes a final administrative action.

(h) Staff shall attempt to make a claim determination within six months from the date of filing. If a final disposition is not made within the six-month period, the claimant may assume that the claim is denied. The denial of a claim constitutes a final administrative action. An individual whose claim is denied may elect to institute a suit upon denial of that claim.

§ 543.32 Appreciation and depreciation.

Staff may take appreciation or depreciation into account in settling a claim filed under the Federal Tort Claims Act involving loss of or damage to personal property.

PART 544—EDUCATION

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AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

SOURCE: 44 FR 38249, June 29, 1979, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Education Tests: Minimum Standards for the Administration, Interpretation, and Use at all Bureau of Prisons Institutions

§ 544.10 Purpose and scope.

(a) The Bureau of Prisons administers appropriate educational tests to inmates confined within its institutions. Staff shall administer the Stanford Achievement Test (SAT) within one month of arrival of a newly committed inmate sentenced to a term of more than one year provided that the inmate reads English. Staff may administer the Revised BETA, the General Aptitude Test Battery (GATB), and other appropriate achievement and aptitude tests as needed to take a specific measure of achievement or aptitude. Community Treatment Centers, Detention Centers, and Metropolitan Correctional Centers are excluded from the provisions of this rule, as the test procedures described apply only to institutions and camps maintaining full educational programs.

(b) When test results are required for program placement and other purposes, the Warden may approve the administration of an SAT to a newly committed inmate who is serving a sentence of a year or less.

(c) Staff may not allow inmates to administer, score, or interpret tests which are the subject of this rule. Staff may not assign the clerical handling of such tests to an inmate.

[45 FR 33939, May 20, 1980]

Subpart C—Postsecondary Education Programs for Inmates

§ 544.20 Purpose and scope.

The Bureau of Prisons encourages an interested inmate's enrollment in college-level programs whenever staff recommends such enrollment to meet a correctional goal. The Warden shall establish procedures for implementation of college-level programs. The term "college-level programs" as used in this rule shall include courses of study provided by junior or community colleges, four-year colleges and universities, and postsecondary vocational or technical schools.

§ 544.21 Procedures.

(a) When an inmate expresses interest in college-level work and staff agrees it is an appropriate program goal, staff shall assist the inmate to explore possible sources of tuition support.

(b) The institution may, as resources permit, pay up to 50 percent of the cost of college-level courses and related expenses for an inmate when:

(1) Staff determines participation to be an appropriate component of the inmate's program; and

(2) The inmate lacks personal and tuition support resources to pay the total cost.

(c) The institution may, as resources permit, pay total costs of college-level courses and related expenses for an inmate when:

(1) No other sources of support are available; and

(2) Participation is a necessary component of an inmate's correctional program.

(d) Staff may apply these financial arrangements to the following:

(1) Institutional and community-based programs;

(2) Correspondence programs offered by junior or community colleges;

(3) Four-year colleges and universities; and

(4) Postsecondary vocational or technical schools.

Subpart D—Recreation Programs—Inmates

SOURCE: 45 FR 33939, May 20, 1980, unless otherwise noted.

§ 544.30 Purpose and scope.

The Bureau of Prisons encourages an inmate to make constructive use of leisure time and offers the interested inmate opportunity to participate in a wide variety of sports and social activities, as well as arts and hobbycrafts. The Bureau of Prisons encourages the showing of movies whose chief value may be their entertainment potential. Except for such Community Treatment Centers, Detention Centers, and Metropolitan Correctional Centers where full recreation programs may not be feasible, the Warden shall operate a recreation program in the institution to provide an inmate the opportunity for maximum use of leisure time.

§ 544.31 Definitions.

(a) *Leisure Activities*—describe a wide range of activities in which an inmate may engage when not performing assigned duties. Leisure activities include organized or informal sports, table games, hobbycrafts, membership in social and cultural organizations, and attendance at movies and stage shows. Religious activities, education classes, and activities conducted by Psychology Services are not included within this definition.

(b) *Organized Activities*— are activities for which there is an accounting by registration or roster of individual participation.

(c) *Art Work*—includes all paintings and sketches rendered in any of the usual media (oils, pastels, crayons, pencils, inks, and charcoal), with the exception of printers or india ink, consistent with institution guidelines.

(d) *Hobbycraft Activities*—include leatherwork, models, clay, mosaics, crocheting, knitting, sculptures, woodworking, lapidary, and other forms consistent with institution guidelines.

§ 544.32 Goals.

(a) The Warden is to insure, to the extent possible, that:

(1) Leisure activity programs are used to meet the social, physical, and psychological needs of inmates;

(2) Leisure activities are designed to attract inmate participation regardless of ethnic, racial, age and sex differences, and to provide positive carry-over for post-release involvement;

(3) An inmate with the need, capacity, and desire has the opportunity to complete one or more prescribed leisure activities (see 28 CFR 544.81);

(4) A hobbycrafts program is available in the institution;

(5) Music programs are offered in the institution to provide an inmate the opportunity to learn basic theory, and to develop appreciation, as well as musical skills; and

(6) Intramural competitive activities are organized for each appropriate season of the year.

§ 544.33 Art and hobbycraft.

(a) An inmate engaged in art or hobbycraft activities may obtain materials through:

(1) The institution art program (if one exists);

(2) The commissary sales unit;

(3) Special purchase commissary orders, if the sales unit is unable to stock a sufficient amount of the needed materials; or

(4) Other sources approved by the Warden.

(b) Each inmate shall identify art or hobbycraft materials by showing the inmate's name and registration number on the reverse side of the item.

(c) Completed or abandoned art or hobbycraft articles may be disposed of in the following manner:

(1) Upon approval of the Warden, by giving the item to an authorized visitor;

(2) Mailing the item to a verified relative or approved visitor; postage, unless otherwise determined by the Warden, must be paid by the inmate;

(3) Selling the item through an institution's art and hobbycraft sale program (if one exists) after sales prices have been determined by the institution's Price Committee; or

(4) Other methods approved by the Warden.

(d) *Restrictions.* (1) The Warden may restrict, for reasons of security and housekeeping, the size of inmate paintings. Paintings mailed out of the institution must conform to both institution guidelines and postal regulations. If an inmate's art work or hobbycraft is on public display, the Warden may restrict the content of the work in accordance with community standards of decency.

(2) The Warden may set limits, in compliance with commissary guidelines, on the amount of money an inmate may spend on art or hobbycraft material.

(3) The Warden may restrict for reasons of security, fire safety, and housekeeping, the use or possession of art and hobbycraft items or materials.

(4) The Warden may limit hobbycraft projects in the cell/living areas to those which can be contained/stored in designated personal property containers. Exceptions may be made for such items as a painting where the size would prohibit placement in a locker. Hobbycraft items must be removed from the living area when completed.

(5) The Warden shall require completed hobbycraft articles to be mailed out of the institution, at the inmate's expense, within 30 days of completion or disposal through approved sales. However, articles offered for sale must be sold within 90 days of completion, or be mailed out of the institution at the inmate's expense.

§ 544.34 Movies.

The Warden may approve the showing of movies at the institution. A committee designated by the Warden shall select and review suggested films and submit the list to the Warden for final approval. The committee shall include staff and inmate representatives.

Subpart E—[Reserved]

Subpart F—Apprentice Training in Institutions

§ 544.50 Purpose and scope.

The Bureau of Prisons provides an inmate the opportunity to participate in apprenticeship training programs to prepare the inmate for career employment in various trades. It is the policy of the Bureau of Prisons to establish approved apprenticeship training progams for inmates in those program areas of its institutions which have the potential to meet the requirements and standards of the Bureau of Apprenticeship and Training (BAT), U.S. Department of Labor.

[45 FR 75126, Nov. 13, 1980]

Subpart G—Education Program Certificates

§ 544.60 Purpose and scope.

The Bureau of Prisons encourages certification when an inmate completes an education program. The Warden shall establish a system in the institution's education department for issuing certificates.

§ 544.61 Procedures.

(a) Staff shall issue a certificate when it: (1) Contributes to an inmate's future plans in such a way that it validates the inmate's education and training;

(2) Supports the inmate's chances of securing employment;

(3) Improves the inmate's acceptance for advanced education; or

(4) Enhances the inmate's opportunity for success in any other activity the inmate chooses to pursue.

(b) Staff shall approve and issue a certificate that fits one or a combination of the following categories: (1) Accredited certificates—High school diplomas and vocational training certificates approved or issued through local school districts, state departments of education, or other recognized accrediting educational organizations;

(2) Postsecondary certificates—Postsecondary degrees or course certificates approved or issued through a sponsoring accredited educational institution;

(3) General Education Development tests—Programs sponsored by the American Council on Education;

(4) Private certificates—Outside agencies other than those stated in paragraph (b)(1) of this section;

(5) Institutional certificates—Approved general education, occupational training, recreation and social education certificates, issued to an inmate who completes a program, and when the institution cannot provide a certificate as provided in paragraphs (b)(1) and (4) of this section; or

(6) Transcript—Issued to an inmate who completes general education programs, formal vocational training, on-the-job and apprentice training and work assignments, and, upon request of or with consent of the inmate, to schools and colleges, business and industry and other agencies when needed and requested for assistance to inmates who are engaged in advancing or improving their social and economic status.

Subpart H—Adult Basic Education (ABE) Program

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

SOURCE: 47 FR 22007, May 20, 1982, unless otherwise noted.

§ 544.70 Purpose and scope.

The Bureau of Prisons requires that an inmate confined in a federal institution who cannot read, write, or do mathematics at the 6.0 academic grade level be required to attend an adult basic education program (ABE) for a minimum of 90 calendar days. The Warden shall establish incentives to encourage an inmate to complete the ABE program.

§ 544.71 Applicability.

(a) The provisions of this subpart on the adult basic education program apply to all inmates in federal institutions *except*:

(1) Pre-trial inmates;

(2) Inmates committed for purpose of study and observation under the provisions of 18 U.S.C. 4205(c);

(3) Sentenced aliens with a deportation detainer;

(4) Inmates already in UNICOR or Inmate Performance Pay (IPP) assignments in pay grades 1, 2, and 3 at the time of implementation of this rule who do not presently function at the 6.0 academic grade level;

(5) Other inmates who, for good cause, the Warden may determine are exempt from the provisions of this rule.

(b) Staff shall document in the inmate's education file the specific reasons for not requiring the inmate to participate in the ABE program.

(c) Inmates who function below the 6.0 academic grade level and for whom treatment is mandated by statute (for example, Youth Corrections Act) shall be required to participate in the adult basic education program, as educational involvement is considered within the general scope of treatment.

§ 544.72 Procedures.

(a) The Warden at each federal institution shall ensure that an inmate who is functioning below a 6.0 academic grade level in reading, writing, and mathematics is enrolled in the ABE program.

(b) The Warden or designee shall assign to an education staff member the responsibility to coordinate the institution's ABE program. The ABE coordinator shall meet initially with the inmate for the purpose of enrolling the inmate in the ABE program. Subsequently, the ABE coordinator shall interview each inmate involved in the ABE program at least once every 30 days to review and record the inmate's progress in this program. The ABE coordinator shall place documentation of this interview in the inmate's education file.

(c) At the end of 90 calendar days, excluding sick time, furloughs, or other authorized absences from scheduled classes, the inmate's unit team shall meet with the inmate in respect to the inmate's continued involvement in the ABE program towards attainment of the 6.0 academic grade level. At this time, the inmate may elect not to continue in the ABE program, without disciplinary action occurring.

§ 544.73 Federal Prison Industries (UNICOR) and Inmate Performance Pay (IPP) Assignments.

Inmates who wish to secure a UNICOR or IPP work assignment above the fourth grade of compensation must be able to demonstrate achievement of at least a 6.0 academic grade level. An inmate may be assigned to the fourth grade of compensation in the UNICOR or IPP WORK assignment contingent on the inmate's enrollment, and satisfactory participation, in the ABE program. Failure of an inmate to make adequate progresss in the ABE program may be considered basis for removal of the inmate from the UNICOR or IPP assignment.

§ 544.74 Incentives.

The Warden shall establish a system of incentives to encourage an inmate to obtain a minimum academic grade level of 6.0.

§ 544.75 Disciplinary Action.

As with other mandatory programs, such as work assignments, staff may take disciplinary action against an inmate whose academic level is below the 6.0 grade level when that inmate refuses to enroll in, or to complete, the mandatory 90 calendar days ABE program.

Subpart I—Education, Training and Leisure-Time Program Standards

§ 544.80 Purpose and scope.

In consideration of inmate educational, occupational, and leisure-time needs, the Bureau of Prisons affords inmates the opportunity to improve their knowledge and skills. These needs are met by providing clear goals and precise program definitions. Except for such camps, Community Treatment Centers, Detention Centers and Metropolitan Correctional Centers where full education programs are not feasible, the Warden shall operate an education department in each institution.

[45 FR 75126, Nov. 13, 1980]

§ 544.81 Program goals.

(a) The Warden shall ensure that during confinement an inmate with the need, capacity and desire has the opportunity to:

(1) Complete an Adult Basic Education (ABE) program;

(2) Complete a General Education Development (GED) program leading to a high school equivalency certificate and/or a high school diploma;

(3) Acquire or improve marketable skill through one or more programs of Occupational Education;

(4) Complete one or more Postsecondary Education activities;

(5) Complete one or more organized Social Education activities;

(6) Complete one or more Adult Continuing Education Activities; or

(7) Complete one or more prescribed leisure activities.

(b) Institution staff shall carry out these goals emphasizing the needs of an inmate in the areas of:

(1) Functional literacy;

(2) High school equivalency;

(3) Marketable work skills;

(4) Continuing education;

(5) Personal experiences; and

(6) Positive use of leisure time.

[44 FR 62251, Oct. 29, 1979, as amended at 45 FR 75127, Nov. 13, 1980]

§ 544.82 General program characteristics.

(a) The Warden shall establish the conditions to be met before a program or an activity is ranked as an approved and bona fide education program. Every program must involve:

(1) Written curriculum outlining objectives and procedures;

(2) Pre-assessment and post-assessment of student progress;

(3) Supervision by the education department or its designee; and

(4) Periodic external review of significance, timeliness and effectiveness.

[44 FR 62251, Oct. 29, 1979]

Subpart J—Social Education Guidelines

§ 544.90 Purpose and scope.

The Bureau of Prisons recognizes that inmates should have an opportunity to increase skills to improve their interpersonal relationships, communication, self-motivation, realistic goal setting, and positive self-concept. The Warden shall make available to an inmate throughout the term of the inmate's commitment programs to foster such skills, reinforced by staff contacts. The Warden shall designate staff to serve as Social Education Coordinator(s).

[45 FR 75125, Nov. 13, 1980]

§ 544.91 Program characteristics.

(a) The Warden shall ensure that during confinement an inmate with the need, capacity, and desire has the opportunity to complete one or more organized social education activities (see 28 CFR 544.81). Staff shall encourage each inmate to accept the responsibility for identifying any specific social education needs, setting personal goals, and deciding on involvement in activities, programs and/or work experiences which will assist the inmate in reaching those goals.

(b) Staff shall qualify an activity as social education if it meets any of the following criteria:

(1) Teaches or reinforces self-development and personal growth;

(2) Helps to increase self-knowledge;

(3) Fosters the development of a realistic self-concept;

(4) Strengthens appropriate skills in interpersonal relationships; or

(5) Strengthens appropriate skills in coping with the problems to be faced as consumers, family members, wage earners, and responsible citizens.

[45 FR 75125, Nov. 13, 1980]

Subpart K—Inmate Library Services

§ 544.100 Purpose and scope.

The Bureau of Prisons provides inmates within each of its institutions with library services necessary for educational, cultural, and leisure activity. The Warden shall ensure that the inmate library has a wide variety of reading materials. Library services shall ordinarily be available to all inmates daily, including evenings and weekends, except in detention facilities where service shall be scheduled as frequently as possible to ensure reasonable access.

[46 FR 24900, May 1, 1981]

§ 544.101 Procedures.

(a) The Warden shall assign a staff member (ordinarily the Supervisor of Education) responsibility for the inmate library.

(b) The inmate library shall offer an inmate a variety of reading materials, including, but not limited to, periodicals, newspapers, fiction, non-fiction, and reference books.

(c) Where the population of an institution includes inmates of foreign origin, staff shall attempt to provide reading materials in the inmates' language.

(d) Inmate library services shall be made available to inmates in special housing units.

(e) The Warden or designee may authorize the use of inmates as library assistants.

[46 FR 24900, May 1, 1981]

Subpart L—Annual Survey of Inmate Education, Recreation, and Library Programs

§ 544.110 Purpose and scope.

(a) The Bureau of Prisons has established a systematic approach for assessing the education, recreation, and library programs which operate within each Bureau of Prisons institution. Except for such community treatment centers and camps where education, recreation, and library programs may not be feasible, the Warden shall ensure that an annual survey is administered to a representative sample of the local inmate population to determine inmate perception of needs, attitudes, opinions, and recommendations concerning the structure and content of the education, recreation, and library programs which operate within the institution.

[46 FR 43810, Aug. 31, 1981]

PART 545—WORK AND COMPENSATION

Subpart A-D—[Reserved]

Subpart E—Scholarship Program

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Subpart F—Federal Prison Industries, Inc. (UNICOR)—Inmate Hiring Procedures

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Subpart G—Incentive Awards Program, UNICOR Inmates

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545.64 Procedures for recognition of inmate special achievement.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4126, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subparts A-D—[Reserved]

Subpart E—Scholarship Program

SOURCE: 46 FR 24900, May 1, 1981, unless otherwise noted.

§ 545.40 Purpose and scope.

Federal Prison Industries, Inc. (UNICOR) annually awards postsecondary scholarships to selected inmates assigned to FPI, Inc. These scholarships provide an interested inmate with an opportunity to take courses or programs related to the inmate's industrial assignment while still employed by FPI, Inc.

§ 545.41 Eligibility.

(a) The Superintendent of Industries at each institution shall develop application procedures to include, at a minimum, the following considerations.

(1) The inmate shall be assigned as a full-time worker of Federal Prison Industries, Inc.

(2) The inmate shall have received a favorable recommendation from the inmate's immediate industrial supervisor.

(b) The inmate must be accepted by the institution of higher learning offering the course or program.

(c) The inmate meets the relevant institutional requirements (for example, custody) for participation.

§ 545.42 Selection.

Scholarship selections shall ordinarily be made by a three person committee comprised of the Superintendent of Industries, the Supervisor of Education, and the affected Industrial Department head.

§ 545.43 Limitations.

(a) When practicable, one scholarship may be awarded, per semester or quarter, for every 50 industrial inmate workers. At least one scholarship may be awarded at each industrial location annually, regardless of the number of inmates assigned.

(b) Scholarship amounts may not exceed $200 per semester or quarter per inmate.

(c) An inmate may receive no more than three scholarships in any 12 month period.

Subpart F—Federal Prison Industries, Inc. (UNICOR)—Inmate Hiring Procedures

SOURCE: 46 FR 34549, July 1, 1981, unless otherwise noted.

§ 545.50 Purpose and scope.

Federal Prison Industries, Inc. (UNICOR) provides inmates confined in Bureau of Prisons institutions an opportunity to obtain a work assignment within each institution's industrial location. This rule provides a procedure for an inmate to obtain a work assignment in Federal Prison Industries, Inc., and for determining initial rates of compensation.

§ 545.51 Procedures.

(a) Staff shall select an inmate for an industrial work assignment from the institution's Industries' waiting list.

(b) For purpose of determining compensation, the inmate shall be placed in available entry-level positions.

(c) The Warden or designee may make an exception to either paragraph (a) or (b) of this section when there exists a supported need for a specific skill. When this occurs, an inmate with that skill, regardless of position on the list, may be hired to fill the vacancy, at the position's existing grade level.

§ 545.52 Transfers.

(a) When an inmate employed in an industrial assigment in one institution transfers (for other than disciplinary reasons) to another institution which has an industrial operation requiring comparable job skills, staff shall make a reasonable effort to hire the inmate into a comparable work assigment with comparable compensation. Where no such position exists, the inmate shall be placed on the institution's Industries' waiting list, with consideration being given for accelerated promotion.

(b) An inmate employed in an industrial assignment in one institution who transfers to another institution where the inmate is again placed in an industrial operation retains all benefits accrued in the inmate's preceding industrial assignment.

§ 545.53 Factory closings.

(a) When an industrial factory closes in a location where there are two or more factories, an inmate who loses his/her job assignment as a result of the closing will be placed in the top portion of the institution's Industries' waiting list.

(b) When an entire industrial factory is moved from one location to another, and when an inmate assigned to that industrial factory agrees to a reassignment to the new institution for purpose of working in that industrial factory, that inmate is transferred at his/her current rate of compensation.

§ 545.54 Medical reasons.

When an inmate is removed from an industrial assignment because of medical reasons which are not work-related, staff, upon that inmate's return to work status, shall make a reasonable effort to reassign that inmate to an industrial assignment of comparable skill and grade. For work-related injuries, refer to 28 CFR, Part 301, Inmate Accident Compensation.

§ 545.55 Disciplinary reasons.

An inmate who is transferred for disciplinary reasons is evaluated on a case-by-case basis with regard to that inmate's eligibility for consideration under the provisions of this rule.

§ 545.56 Evaluation report.

When an inmate is transferred from an industrial assignment at one location to another institution where there is also an industrial operation, an evaluation form is to be completed by the appropriate Factory Manager, reviewed by the Superintendent of Industries of the sending institution, and forwarded to the Superintendent of Industries of the receiving institution. This process ordinarily is completed within 30 days of transfer.

Subpart G—Incentive Awards Program, UNICOR Inmates

SOURCE: 46 FR 43810, Aug. 31, 1981, unless otherwise noted.

§ 545.60 Purpose and scope.

Federal Prison Industries, Inc. (UNICOR) provides incentives to its inmate workers for special achievements by them, as well as for their suggestions or inventions which improve operations or safety, or conserve energy or materials of Federal Prison Industries, Inc.

§ 545.61 Types of incentives.

(a) An inmate shall receive a formal (written) commendation for any suggestion or invention adopted, or for any special achievement of the inmate related to the inmate's industrial assignment. A copy of the commendation is to be placed in the inmate central file.

(b) An inmate shall receive a cash bonus for any suggestion or invention which is adopted and which contributes a net savings to Federal Prison Industries, Inc. of at least $250. Cash awards shall be based on estimated net first year savings, with a minimum award of $25.

(c) An inmate shall receive either a cash bonus or gifts for any special achievement which, under the standards below, deserves special recognition.

§ 545.62 Award scales for payment for inmate suggestion or invention.

Awards under the Inmate Incentive Awards Program for a suggestion or invention which is adopted are ordinarily provided in accordance with the following table. All awards will be rounded upward to the nearest $25.

Net savings (first year)	Amount of award
$250 to $1,000	$25.
$1,000 to $10,000	$50 for the first $1,000 plus $2.50 for each additional $100 or fraction thereof.
$10,000 to $20,000	$275 for the first $10,000 plus $2.50 for each additional $200 or fraction thereof.
$20,000 to $100,000	$400 for the first $20,000 plus $2.50 for each additional $1,000 or fraction thereof.
$100,000 or more	$600 for the first $100,000 plus $2.50 for each additional $5,000, noit to exceed $1,000 total cash bonus.

§ 545.63 Procedures for recognition of inmate suggestion or invention.

(a) Inmate suggestions for operational or safety improvements, or for conservation of energy or materials must be in writing.

(b) The inmate shall submit the suggestion to the inmate's immediate supervisor. The supervisor shall review the suggestion and shall then submit the suggestion, with the supervisor's comments and recommendation, to the local Superintendent of Industries.

(c) The Superintendent of Industries shall ensure that all inmate suggestions and/or inventions are considered for incentive awards by a committee comprised of Industry personnel, and designated by the Superintendent.

(1) The Committee shall forward recommendations for awards for *inventions* through the Warden to Corporate Headquarters (Attn: Associate Commissioner). The Warden may submit comments on the recommendation.

(2) The committee may approve an inmate whose suggestion is adopted for an award (cash or gifts) not to exceed $50 in value. A recommendation for an award in excess of $50 shall be forwarded through the Warden to Corporate Headquarters (Attn: Associate Commissioner). The committee may refer a suggestion having corporate-wide implications through the Warden to Corporate Headquarters (Attn: Associate Commissioner). The Warden may submit comments on the recommendation.

§ 545.64 Procedures for recognition of inmate special achievement.

(a) While recognition of special inmate achievements may originate from any source, the achievement is ordinarily to be described in writing by the inmate's immediate supervisor.

(b) The Superintendent of Industries shall appoint a local committee, which may include inmate participation, to consider inmates for special achievement recognition. The committee shall forward its recommendations to the Superintendent of Industries, who is authorized to approve individual awards (cash or gifts) not to exceed $50 in value. A recommendation for an award in excess of $50 (cash or gifts) shall be forwarded, with the Superintendent's recommendation and the justification for it, through the Warden to Corporate Headquarters (Attn: Associate Commissioner). The Warden may submit comments on the recommendation.

PART 546—SAFETY

Subparts A—B [Reserved]

Subpart C—Filing Claims for Inmate Accident Compensation

Sec.
546.20 Purpose and scope.
546.21 Procedures.

Subparts A-B—[Reserved]

Subpart C—Filing Claims for Inmate Accident Compensation

§ 546.20 Purpose and scope.

The Bureau of Prisons recognizes an inmate's right to file a claim for inmate accident compensation when the claim results from a work-related injury incurred while confined in federal custody. The Warden shall ensure that an inmate who sustains a work-related injury while confined in federal custody is advised of the right to file a claim for inmate accident compensation prior to release from confinement or transfer to a Community Treatment Center. The Warden shall document this notification in the inmate's record.

(5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4126, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99, 301.5)

[45 FR 33940, May 20, 1980]

§ 546.21 Procedures.

(a) As part of the institution's Admission and Orientation Program, staff shall discuss with the inmate the accident compensation procedures and shall provide each inmate with a copy of the Inmate Accident Compensation Procedures Booklet and with a copy of the Uniform Basic Safety Regulations. Staff shall obtain a signed and dated receipt from each inmate, for placement in the inmate's central file.

(b) Staff shall interview the inmate who has incurred a documented work-related injury while in custody approximately 30 days prior to the inmate's scheduled release from confinement or transfer to a Community Treatment Center. In the interview, staff shall advise the inmate of the right to file a compensation claim and of the importance of filing the claim prior to release from confinement or transfer to a Community Treatment Center. Staff shall request the inmate sign an appropriate form acknowledging advisement of the right to file a compensation claim. In the event the inmate refuses to sign, the staff member who made the advisement shall document this refusal on the form and sign the form himself. Documentation of the notification is then placed in the inmate's central file.

(c) In addition to staff action as described in paragraph (b) of this section, an inmate may elect to directly contact staff regarding filing a claim for accident compensation. Such a request should not be made until approximately 30 days prior to the inmate's scheduled release from confinement or transfer to a Community Treatment Center.

(5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4126, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99, 301.5)

[45 FR 33940, May 20, 1980]

PART 547—FOOD SERVICE

Subpart A—[Reserved]

Subpart B—Religious Diet Requirements

Sec.
547.10 Purpose and scope.
547.11 Use of pork and pork derivatives in the preparation and seasoning of specific food items.
547.12 Kosher food eligibility.
547.13 Basic Kosher menu.

Subpart C—Introduction Into Institutions of Special Food or Meals From Outside Sources

547.20 Policy.

Subpart A—[Reserved]

Subpart B—Religious Diet Requirements

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

SOURCE: 44 FR 38250, June 29, 1979, unless otherwise noted.

§ 547.10 Purpose and scope.

The Bureau of Prisons extends the greatest amount of individual freedom to inmates in the selection of food items within the constraints of standard ration allowances, budget limitations, and consideration of the security and orderly running of the institution. Inmates who wish to observe religious dietary laws will be provided a diet sufficient to sustain them in good health without violating those dietary laws.

§ 547.11 Use of pork and pork derivatives in the preparation and seasoning of specific food items.

(a) In the preparation of 35-day cycle menus for administrative appraisal, staff shall identify with an asterisk all food items to be prepared or seasoned with pork or pork derivatives. Staff shall post the menus, with pork items identified, on menu boards in all dining rooms and shall inform the institution population of the meaning of the asterisk or other marking.

(b) In instances where the posted menu offers only one vegetable for a meal, pork or pork derivatives may not be used as a seasoning agent for that vegetable. If more than one vegetable is offered, at least one will be pork free.

§ 547.12 Kosher food eligibility.

(a) A Jewish inmate who wishes to observe Jewish dietary laws shall sign a statement to that effect. The inmate must present this statement to the institution's chaplain and discuss it with him. Upon presentation of the statement the inmate is entitled to receive Kosher food as soon as practical. This entitlement continues as long as the inmate observes the dietary laws.

(b) If an inmate fails to observe the dietary laws, the Warden may remove the inmate from the Kosher food program. The inmate who is removed may appeal the removal through the Administrative Remedy Procedure.

§ 547.13 Basic Kosher menu.

(a) All food (except raw eggs, fruits and vegetables) to be provided to inmates observing the Jewish dietary laws shall be certified or deemed acceptable by the Kashruth Division of the Union of Orthodox Jewish Congregations of America or any other Jewish agency deemed acceptable by the inmates at the local institution.

(b) Staff shall provide proper utensils for preparing, storing, serving and eating Kosher food.

(c) The Warden may assign an inmate entitled to Kosher food to the food service to facilitate the implementation of these regulations.

Subpart C—Introduction Into Institutions of Special Food or Meals From Outside Sources

§ 547.20 Policy.

Except as provided in paragraphs (a)-(d) of this section, the Bureau of Prisons requires that special food or meals prepared for and/or served to any group(s) of inmates also be served to the institution's entire inmate population.

(a) The Warden may exempt from this requirement food which is brought to the visiting area as part of the approved visiting program.

(b) Food items sold in the institution's commissary are exempt from the provisions of this rule.

(c) Meals served in accordance with the provisions of Part 548, Subpart B (Religious Beliefs and Practices of Committed Offenders) are exempt from the provisions of this rule.

(d) Special foods (e.g., Kosher food, food for medical diet) purchased by food service staff to augment main line foods are exempt from the provisions of this rule.

[46 FR 24901, May 1, 1981]

PART 548—RELIGIOUS PROGRAMS

Subpart A—[Reserved]

Subpart B—Religious Beliefs and Practices of Committed Offenders

Sec.
548.10 Purpose and scope.
548.11 Procedures.
548.12 Diet.
548.13 Scheduling to observe religious holidays, services, meetings, ceremonies, and activities.

Subpart A—[Reserved]

Subpart B—Religious Beliefs and Practices of Committed Offenders

AUTHORITY: 18 U.S.C. 4001, 4042; 28 U.S.C. 509, 510; 42 U.S.C. 1996; 28 CFR 0.95-0.99.

SOURCE: 44 FR 38251, June 29, 1979, unless otherwise noted.

§ 548.10 Purpose and scope.

(a) The Bureau of Prisons extends to an inmate the greatest amount of freedom of and opportunity for pursuing individual religious beliefs and practices as is consonant with the maintenance of security and good order of the institution.

(b) When it is considered necessary for the security or good order of the institution, the Warden may limit attendance at or discontinue completely a religious activity, service, ceremony, or meeting. The Warden may not restrict or allow the religious group itself to restrict attendance at or participation in a religious activity, service, ceremony, or meeting on the basis of race, color, nationality, or creed.

(c) All religious services, activites, ceremonies, and meetings must comply with institutional schedules and guidelines.

[44 FR 38251, June 29, 1979, as amended at 45 FR 75127, Nov. 13, 1980]

§ 548.11 Procedures.

(a) Institution Chaplains are available to assist in the expansion of an inmate's knowledge and understanding of and commitment to the beliefs and principles of the inmate's religion. Upon request, the Chaplain is available to provide pastoral care, counseling, religious education, and religious instruction.

(b) Institution Chaplains shall schedule religious services of worship, activities, ceremonies and meetings. All religious services, meetings, ceremonies, and activities are coordinated by the Chaplain, under the general supervision of the Warden. If an institution has no staff chaplain, a staff member designated by the Warden shall exercise the authority of the Chaplain.

(c) Institution staff may contract with clergy, spiritual advisors, or representatives of faith groups in the community and may also accept the services of volunteers to help inmates pursue their religious beliefs.

(d) No one may disparage the religious beliefs of an inmate, nor coerce or deliberately seek to persuade an inmate to change religious affiliation.

(e) An inmate may designate any or no religious preference. An inmate may change this designation at any time.

(f) Attendance at all religious worship services, activities, ceremonies and meetings is voluntary.

(g) An inmate may wear, during a religious serivce, appropriate personal, liturgical, or ceremonial apparel. An inmate may retain this apparel within the context of maintaining security, safety, and orderly conditions in the institution and it may be worn or used only during scheduled religious services, ceremonies or in private devotional observances.

(h) Within the context of maintaining security, safety, and orderly conditions in the institution, an inmate may wear within the institution religious headgear such as yarmulkes and kufis as prescribed by the respective faith groups.

(i) Each inmate who wishes to have religious books, publications, or materials must comply with the general rules of the institution regarding the retention and accumulation of personal property. Literature, publications, or books about religion or religious teaching are permitted in accordance with the procedures governing incoming publications.

[44 FR 38251, June 29, 1979, as amended at 45 FR 75127, Nov. 13, 1980]

§ 548.12 Diet.

(a) An inmate may abstain from eating food items served to the general inmate population which are prohibited by the inmate's religion (See Part 547, Subpart B).

(b) As a once-a-year accommodation, staff may make arrangements with an inmate religious group to have a special meal which meets liturgical or ceremonial standards of the religion. In most situations, all or most food items to be served are from the main serving line. If the inmates representing the organization request, based upon documented necessity, staff may purchase from a food supplier specially prepared food items which meet religious requirements. Funds for the purchase of special food items are provided from:

(1) Funds from Chaplain's budget;

(2) Inmates' commissary accounts; or

(3) Funds provided by the community organization.

[44 FR 38251, June 29, 1979, as amended at 45 FR 75127, Nov. 13, 1980]

§ 548.13 Scheduling to observe religious holidays, services, meetings, ceremonies, and activities.

(a) The Warden shall endeavor to facilitate the observance of important religious holidays or celebrations that do not coincide with legal holidays, and to facilitate that observance in accordance with specific requirements of a faith group, e.g., fasting, worship, diet, or work proscription. The inmate must initiate a request for specific observance of a religious holiday.

(b) The Warden may relieve an inmate from a work assignment if a religious activity, service, ceremony or meeting is also scheduled at that time. The Warden may schedule the inmate to make up work at another time. The Warden shall take into consideration the availability of staff and space within the institution when scheduling religious services, ceremonies, activities, or meetings.

(c) The chapel may be open during the noon meal hour for prayer and worship.

[44 FR 38251, June 29, 1979, as amended at 45 FR 75127, Nov. 13, 1980]

PART 549—MEDICAL SERVICES

Subparts A-C—[Reserved]

Subpart D—Plastic Surgery and Identification Records

Sec.
549.50 Purpose and scope.
549.51 Procedures.

Subpart E—Hunger Strikes, Inmate

549.60 Policy.
549.61 Definition.
549.62 Initial referral.
549.63 Initial medical evaluation and management.
549.64 Food/liquid intake/output.
549.65 Refusal to accept treatment.
549.66 Release from treatment.

Subpart F—Suicide Prevention Program

549.70 Purpose and scope.
549.71 Suicide prevention program.

Subparts A-C—[Reserved]

Subpart D—Plastic Surgery and Identification Records

§ 549.50 Purpose and scope.

The correction of obvious disfigurements on any part of the body, particularly facial disfigurements or functional impairments, can be a significant factor in improving an inmate's self-image, emotional stability, and social adjustment. The result may well affect institutional adjustment and particularly post-release adjustment and employability. Therefore, such a procedure can be an integral part of an inmate's overall correctional program. The Bureau of Prisons provides, within available resources, corrective and reconstructive surgery for an inmate to correct obvious disfigurement. The Warden shall establish criteria for the selection of an inmate for plastic surgery procedures which may alter an inmate's physical appearance or otherwise affect identification.

(18 U.S.C. 4001, 4005, 4042, 4081, 4082, 5006-5024, 5039; 28 CFR 0.95-0.99)

[44 FR 38251, June 29, 1979]

§ 549.51 Procedures.

(a) The inmate's written request for plastic surgery may be approved by the Warden with approval by the appropriate medical and other institutional staff. Plastic surgery may be performed only by qualified medical persons and only with the written informed consent of the inmate involved.

(b) Staff shall approve an inmate for plastic surgery when:

(1) It is indicated for medical reasons; or

(2) It is believed that such surgery will assist the inmate's institutional or particularly his post-release adjustment.

(c) Staff shall consider for correction repulsive disfigurements and nude, lewd, or lascivious tattoos.

(d) Staff is not restricted to those areas of paragraph (c) of this section when other sound medical or psychological and social reasons are identified.

(e) Staff shall photograph and make written descriptions of an inmate's features that are to be altered before and after surgery. Any operation which changes the identification of the inmate in any way is made a part of his record and shall be reported to the FBI.

(18 U.S.C. 4001, 4005, 4042, 4081, 4082, 5006-5024, 5039; 28 CFR 0.95-0.99)

[44 FR 38252, June 29, 1979]

Subpart E—Hunger Strikes, Inmate

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4005, 4042, 4081; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99, unless otherwise noted.

SOURCE: 45 FR 23365, Apr. 4, 1980, unless otherwise noted.

§ 549.60 Policy.

The Bureau of Prisons provides guidelines for the medical and administrative management of inmates who engage in hunger strikes. It is the responsibility of the Bureau of Prisons to monitor the health and welfare of individual inmates, and to ensure that procedures are pursued to preserve life.

§ 549.61 Definition.

As defined in this rule, an inmate is on a hunger strike:

(a) When he or she communicates that fact to staff and is observed by staff to be refraining from eating for a period of time, ordinarily in excess of 72 hours; or

(b) When staff observe the inmate to be refraining from eating for a period in excess of 72 hours. When staff consider it prudent to do so, a referral for medical evaluation may be made without waiting 72 hours.

§ 549.62 Initial referral.

(a) Staff shall refer to medical staff for evaluation and, when appropriate, for treatment, an inmate who is observed to be on a hunger strike.

(b) When considered medically appropriate, medical staff shall place the inmate in a hospital. When isolation is necessary to measure food and liquid intake/output, medical staff may place the inmate in a locked hospital or other medically appropriate room.

§ 549.63 Initial medical evaluation and management.

(a) Medical staff shall ordinarily perform the following procedures upon initial referral of an inmate on a hunger strike:

(1) Measure and record height and weight;

(2) Take and record vital signs;

(3) Urinalysis;

(4) Psychological and/or psychiatric evaluation;

(5) General medical evaluation;

(6) X-Ray—flat plate of abdomen and chest; and

(7) Complete blood count, sedimentation rate and blood chemistry tests as indicated by medical evaluation.

(b) Medical staff shall take and record weight and vital signs at least once every 24 hours while the inmate is on a hunger strike. Other procedures identified in paragraph (a) of this section shall be repeated as medically indicated.

(c) When valid medical reasons exist, medical staff may modify, discontinue, or expand any of the medical procedures described in paragraphs (a) and (b) of this section.

(d) When medical staff consider it necessary in order to provide appropriate medical treatment, an inmate on a hunger strike will be transferred to the Medical Center for Federal Prisoners, to another Bureau institution considered medically appropriate, or to a community hospital.

§ 549.64 Food/liquid intake/output.

(a) Staff shall prepare and deliver to the inmate's room three meals per day or as otherwise authorized by the physician.

(b) Staff shall provide the inmate an adequate supply of drinking water. Other beverages shall also be offered.

(c) Staff shall remove any commissary food items and private food supplies of the inmate while the inmate is on a hunger strike. An inmate may not make commissary purchases while under hunger strike management.

§ 549.65 Refusal to accept treatment.

(a) When, as a result of inadequate intake or abnormal output, a medical officer determines that the inmate's life or permanent health will be threatened if treatment is not initiated immediately, the medical officer shall give consideration to forced medical treatment of the inmate.

(b) Prior to medical treatment being administered against the inmate's will, staff shall make reasonable efforts to convince the inmate to voluntarily accept treatment. Medical risks faced by the inmate if treatment is not accepted shall also be explained to the inmate. Staff shall document their treatment efforts in the medical record of the inmate.

(c) When, after reasonable efforts, or in an emergency preventing such efforts, a medical necessity for immediate treatment of a life or health threatening situation exists, the medical officer may order that treatment be administered without the consent of the inmate. Staff shall document their treatment efforts in the medical record of the inmate.

(d) Staff shall continue clinical and laboratory monitoring as necessary until the inmate's life or permanent health is no longer threatened.

(e) Staff shall continue medical, psychiatric and/or psychological follow-up as long as necessary.

§ 549.66 Release from treatment.

Only the medical officer may order that an inmate be released from hunger strike evaluation and treatment. This order shall be documented in the medical record of the inmate.

Subpart F—Suicide Prevention Program

SOURCE: 47 FR 27218, June 23, 1982, unless otherwise noted.

EFFECTIVE DATE NOTE: Sections 549.70 through 549.71 (Subpart F) were added at 47 FR 27218, June 23, 1982, effective July 26, 1982.

§ 549.70 Purpose and scope.

The Bureau of Prisons provides guidelines for the management of potentially suicidal inmates. While such occurrences as suicide attempts cannot be totally eliminated, the Bureau of Prisons is responsible for monitoring the health and welfare of individual inmates, and for ensuring that procedures are pursued to help preserve life. Towards fulfillment of this objective, each Warden shall designate in writing a full-time staff member to serve as Program Coordinator for an institution suicide prevention program.

§ 549.71 Suicide prevention program.

The Program Coordinator shall ensure that the institution's suicide prevention program contains the following elements:

(a) *Identification.* Staff at each institution shall be trained (ordinarily by psychology services personnel) to recognize those signs exhibited by an inmate that may be indicative of a potential suicide.

(b) *Referral.* Staff shall immediately refer to the Program Coordinator any inmate who exhibits behavior indicative of a potential suicide. Documentation of the referral shall be placed in the inmate's medical file.

(c) *Crisis Intervention.* Upon receipt of a referral, the Suicide Prevention Program Coordinator is to immediately initiate appropriate crisis intervention techniques. These techniques shall include, but are not limited to, the following:

(1) Meeting with the inmate;

(2) Demonstrating a caring concern; and

(3) Not leaving the inmate unattended.

(d) *Coordinator's assessment.* If the Program Coordinator determines after meeting with the inmate that the inmate is not potentially suicidal, the Program Coordinator shall state in writing the basis for this conclusion. This document is attached to the initial referral and placed in the inmate's medical file.

If the Program Coordinator determines that there is a potential for suicide, the maintenance procedures given in paragraph (e) of this section will be initiated immediately.

(e) *Maintenance.* The Program Coordinator shall arrange for the inmate identified as a potential suicide to be maintained under frequent observation. The Program Coordinator shall also utilize other appropriate maintenance techniques. Examples of such techniques include, but are not limited to, immediate reassignment of housing, increased contact with those staff members with whom the inmate has developed a positive relationship, and the provision of treatment services.

(f) *Documentation.* Staff shall document in the inmate's medical file all efforts made on behalf of the potentially suicidal inmate.

(g) *Training.* The Program Coordinator shall ensure that both staff and selected inmates are provided training in suicide prevention techniques. Staff shall receive this training as part of their annual refresher training. Selected inmates shall be trained as "companions", to perform specified functions in helping to monitor suicide-prone inmates. Inmates selected as "companions" shall receive compensation for time spent monitoring a potentially suicidal inmate.

PART 550—DRUG PROGRAMS

Subpart A—[Reserved]

Subpart B—Alcohol Testing

Sec.
550.10 Purpose and scope.

Subpart C—[Reserved]

Subpart D—Urine Surveillance to Detect and Deter Illegal Drug Use

550.30 Purpose and scope.

Subpart A—[Reserved]

Subpart B—Alcohol Testing

§ 550.10 Purpose and scope.

The Bureau of Prisons maintains a surveillance program in order to deter and to detect the illegal introduction or use of alcohol in its institutions. In an effort to reduce the introduction or use of alcohol, the Warden shall establish procedures for monitoring and testing individual inmates or groups of inmates who are known or suspected to be users of alcohol, or who are considered high risks based on behavior observed or on information received by staff.

(a) Staff may prepare a disciplinary report on an inmate who shows a positive substantiated test result for alcohol.

(b) Staff may initiate disciplinary action against an inmate who refuses to submit to an alcohol test.

(5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99)

[45 FR 33940, May 20, 1980]

Subpart C—[Reserved]

Subpart D—Urine Surveillance to Detect and Deter Illegal Drug Use

§ 550.30 Purpose and scope.

(a) The Warden shall establish programs of urine testing for drug use, to monitor specific groups or individual inmates who are considered as high risk for drug use, such as those involved in community activities, those with a known history of drug use, and those inmates specifically suspected of drug use. Testing shall be performed with frequency determined by the Warden on at least 50 percent of those inmates who are involved in community activities. In addition, staff shall randomly sample each institution's inmate population during each month to test for drug use.

(b) Institution staff shall have each positive urine test result validated to substantiate the positive result. If the inmate's urine test shows a positive result for the presence of drugs which the inmate cannot justify, staff shall file a disciplinary report.

(c) If an inmate is unwilling to provide a urine sample within two hours of a request for it, staff may file a disciplinary report. To eliminate the possibility of diluted or adulterated samples, staff shall keep the inmate under direct supervision during this two-hour period.

(5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 4251-4255, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99)

[44 FR 38252, June 29, 1979]

PART 551—MISCELLANEOUS

Subpart A—Grooming

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551.1 Policy.
551.2 Mustaches and beards.
551.3 Hairpieces.
551.4 Hair length.
551.5 Restrictions and exceptions.
551.6 Personal hygiene.
551.7 Bathing and clothing.

Subpart B—[Reserved]

Subpart C—Birth Control, Pregnancy, Child Placement, and Abortion

551.20 Purpose and scope.
551.21 Birth control.
551.22 Pregnancy.
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Subpart D—Inmate Organizations

551.30 Purpose and scope.
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551.50 Policy.

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Subpart G—Administering of Polygraph Test

551.70 Purpose and scope.
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Subpart H—Inmate Manuscripts

551.80 Definition.
551.81 Manuscript preparation.
551.82 Mailing inmate manuscripts.
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Subpart I—Non-Discrimination Toward Inmates

551.90 Policy.

Subpart J—Pre-Trial Inmates

551.100 Purpose and scope.
551.101 Definitions.
551.102 Commitment prior to arraignment.
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551.111 Marriage.
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551.115 Recreation.
551.116 Discipline.
551.117 Access to legal resources.
551.118 Property.
551.119 Release of funds and property of pre-trial inmates.
551.120 Visiting.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

SOURCE: 44 FR 38252, June 29, 1979, unless otherwise noted.

Subpart A—Grooming

§ 551.1 Policy.

The Bureau of Prisons permits an inmate to select the hair style of personal choice, and expects personal cleanliness and dress in keeping with standards of good grooming and the security, good order, and discipline of the institution.

§ 551.2 Mustaches and beards.

An inmate may wear a mustache or beard or both. The Warden shall require an inmate with a beard to wear a beard covering when working in food service or where a beard could result in increased likelihood of work injury.

[46 FR 59509, Dec. 4, 1981]

§ 551.3 Hairpieces.

(a) A female inmate may wear a wig or hairpiece.

(b) A male inmate may not wear an artificial hairpiece.

§ 551.4 Hair length.

(a) The Warden may not restrict hair length if the inmate keeps it neat and clean.

(b) The Warden shall require an inmate with long hair to wear a cap or hair net when working in food service or where long hair could result in increased likelihood of work injury.

(c) The Warden shall make available to an inmate hair care services which comply with applicable health and sanitation requirements.

[44 FR 38252, June 29, 1979, as amended at 46 FR 59509, Dec. 4, 1981]

§ 551.5 Restrictions and exceptions.

The Warden may impose restrictions or exceptions for documented medical reasons.

§ 551.6 Personal hygiene.

The Warden shall make available to an inmate those articles necessary for maintaining personal hygiene.

[46 FR 59509, Dec. 4, 1981]

§ 551.7 Bathing and clothing.

Each inmate must observe the standards concerning bathing and clothing that exist in the institution as required by standards of § 551.1.

[46 FR 59509, Dec. 4, 1981]

Subpart B—[Reserved]

Subpart C—Birth Control, Pregnancy, Child Placement, and Abortion

§ 551.20 Purpose and scope.

The Bureau of Prisons provides an inmate with medical and social services related to birth control, pregnancy, child placement, and abortion. The Warden shall ensure compliance with the applicable law regarding these matters.

§ 551.21 Birth control.

Medical staff shall provide an inmate with advice and consultation about methods for birth control and, where medically appropriate, prescribe and provide methods for birth control.

§ 551.22 Pregnancy.

(a) The Warden shall ensure that each pregnant inmate is provided medical, case managment, and counseling services.

(b) In order to insure proper medical and social services, the inmate shall inform the institution medical staff as soon as she suspects she is pregnant.

(c) Medical staff shall arrange for the childbirth to take place at a hospital outside the institution.

§ 551.23 Abortion.

(a) The inmate has the responsibility for deciding to have an abortion or bear the child.

(b) The Warden shall provide medical, religious and social counseling to aid the inmate in making the decision to have an abortion or bear the child.

(c) An inmate shall sign a statement of responsibility for the decision to have an abortion or bear the child.

(d) At the inmate's request, medical staff shall arrange for the abortion to take place at a hospital or clinic outside the institution.

§ 551.24 Child placement.

(a) The Warden may not permit the inmate's new born child to return to the institution except in accordance with the Bureau of Prisons policy governing visiting.

(b) Child placement is the inmate's responsibility.

(c) The Warden shall provide opportunities for counseling by institution staff and community social agencies to aid the inmate with placement.

(d) The institution staff shall work closely with community agencies and persons to ensure the child is appropriately cared for. The staff shall give notice to the responsible community agency of the inmate's plan for her child. Child welfare workers may come to the institution in appropriate cases to interview and counsel an inmate.

Subpart D—Inmate Organizations

§ 551.30 Purpose and scope.

The Bureau of Prisons permits inmate organizations to function for recreational, social, civic, and benevolent purposes.

§ 551.31 Approval.

(a) A warden may approve an inmate organization when:

(1) The organization has a constitution and bylaws which include its purpose and operation and the duties and responsibilities of the officer(s); the Warden may amend the constitution and bylaws; and

(2) The organization does not operate in opposition to the security, good order, and discipline of the institution.

(b) Every inmate organization shall be coordinated by a staff sponsor whose duties are performed while in official duty status. Staff may volunteer off-duty time to work with inmate organizations.

§ 551.32 Dues.

The organization may not make payment of dues a requirement of membership for an inmate who lacks funds. The organization may not collect dues unless the Warden has approved the rate and method of collection.

§ 551.33 Meetings.

All meetings scheduled must be approved by the Warden and supervised by staff. The organization may not hold meetings at times which are competitive with scheduled inmate work and program activities.

§ 551.34 Fund raising projects.

All activities and projects sponsored by the organization require the Warden's approval. Inmates shall do most of the work in fund raising projects. The Warden may not approve a project that is competitive with the commissary nor one that creates work beyond the resources available to the institution.

§ 551.35 Special activities.

Banquets, community programs, charitable contributions, or the attendance of guests at institution organization meetings and activities require the Warden's approval. The Warden shall require guests to purchase a meal ticket when attending banquets where the government incurs the cost.

§ 551.36 Accountability for funds.

(a) The organization treasurer shall keep financial records to reflect:

(1) Income identified by source; and

(2) Expenditures with applicable receipts.

(b) The treasurer of the inmate organization shall prepare financial statements by April 20, July 20, October 20, and January 20 each year. The treasurer shall present the reports to the membership, the staff sponsor, and the Warden.

(c) The Warden shall require an audit of each inmate organization at least once a year.

(d) The Warden shall disband an inmate organization that fails to maintain suitable financial records, to furnish financial statements, or to complete the required annual audit.

(e) The inmate organization may not use its funds to compensate or to furnish gifts to staff or to finance the staff sponsor's activities.

Subpart E—Inmate Contributions

§ 551.50 Policy.

(a) An inmate may contribute to a candidate for election to a federal, state or local office, in a primary, general, or special election.

(b) An inmate may contribute to any international, national or local organization, including political parties, so long as the contribution does not violate any law or regulation.

Subpart F—[Reserved]

Subpart G—Administering of Polygraph Test

§ 551.70 Purpose and scope.

The Bureau of Prisons cooperates with law enforcement officials and other authorized individuals in the performance of their duties by permitting them to administer polygraph tests to an inmate if the inmate consents to the testing.

§ 551.71 Procedures.

(a) The Warden may permit polygraph tests in connection with a State or Federal criminal felony investigation.

(b) The Warden may permit polygraph tests in connection with misdemeanor offenses, civil proceedings, or any other matters. This type of request, however, is generally disapproved, absent a federal court order for the test.

(c) The Warden may permit a polygraph test at the request of a defense counsel or other representative of the inmate. These requests are subject to the same standards and procedures applicable to testing by law enforcement officials.

(d) The Warden may deny any request for testing which may disrupt the security or good order of the institution.

(e) Upon written request to conduct a polygraph examination of an inmate, the Warden may approve the request if:

(1) The validity of the request and of the examining agency can be confirmed;

(2) The request complies with this section; and

(3) The inmate gives written consent to the testing.

(f) If the request is approved, the Warden shall notify the requestor that he is responsible for meeting all state and local requirements in administering the test.

(g) The Bureau of Prisons maintains a record in the inmate's central file of the polygraph test indicating the inmate's consent and the time and place of and the personnel involved in the testing.

Subpart H—Inmate Manuscripts

§ 551.80 Definition.

As used in this rule, "manuscript" means fiction, nonfiction, poetry, music and lyrics, drawings and cartoons, and other writings of a similar nature.

§ 551.81 Manuscript preparation.

An inmate may prepare a manuscript for private use or for publication while in custody without staff approval. The inmate may use only nonwork time to prepare a manuscript.

§ 551.82 Mailing inmate manuscripts.

An inmate may mail a manuscript as general correspondence, in accordance with Part 540, Subpart B of this chapter. An inmate may not circulate his manuscript within the institution.

§ 551.83 Limitations on an inmate's accumulation of manuscript material.

The Warden may limit, for housekeeping, fire-prevention, or security reasons, the amount of accumulated inmate manuscript material.

Subpart I—Non-Discrimination Toward Inmates

§ 551.90 Policy.

Inmates may not be discriminated against on the basis of race, religion, nationality, sex, handicap, or political belief. Each Warden shall ensure that administrative decisions and work, housing, and program assignments are non-discriminatory.

(18 U.S.C. 4001, 4042; 28 CFR 0.95-0.99)

[45 FR 23366, Apr. 4, 1980]

Subpart J—Pre-Trial Inmates

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

SOURCE: 45 FR 75133, Nov. 13, 1980, unless otherwise noted.

§ 551.100 Purpose and scope.

The Bureau of Prisons houses, in addition to convicted inmates, persons awaiting trial. Procedures and practices required for the care, custody, and control of such inmates may differ from those established for convicted inmates. (Except as limited by this rule, policies and standards applicable to persons committed to the custody of the Attorney General apply to detainees designated Pre-Trial Inmates.)

§ 551.101 Definitions.

(a) *Pre-Trial Inmate:* A person who is legally detained but not convicted. Conviction occurs upon entry of a judgment of conviction. This ordinarily is evidenced by receipt of a Judgment and Commitment from a federal court. Pre-trial status includes an individual who is detained while awaiting trial, while in the process of trial, or while awaiting a verdict, or a detained person who has pleaded or been found guilty but is awaiting sentence.

(1) For purposes of this rule, an inmate committed for civil contempt, or as a detained alien, or as a material witness is considered a pre-trial inmate. An inmate who is committed under 18 U.S.C. 4244 and 4246 is also considered a pre-trial inmate.

(2) For purposes of this rule, an inmate in a status described in paragraph (a) or (a)(1) of this section and who is at the same time serving a state or federal sentence is not considered a pre-trial inmate.

(b) *Convicted Inmate:* An individual a court has found guilty of an offense punishable by law, as evidenced by a judgment of conviction. The Judgment and Commitment is the form customarily used by federal courts to signify officially the status of conviction.

§ 551.102 Commitment prior to arraignment.

On receipt of a U.S. Marshal's Remand, the Bureau of Prisons shall accept an individual who has not been arraigned for commitment as a pretrial inmate provided that the institution has appropriate detention facilities available for the individual.

§ 551.103 Procedure for admission.

(a) Staff institutions with detention-unit operations shall establish procedures for admitting a pre-trial inmate which include, but are not limited to:

(1) Verification of commitment papers;

(2) Search of the inmate;

(3) Photographing and fingerprinting;

(4) Disposition of clothing and personal possessions;

(5) Intake screening, to include:

(i) Social interview to include obtaining identifying data and information relevant to possible separatees;

(ii) Medical screening, including tests for infectious diseases; and

(iii) Evaluation of both the general physical appearance and emotional condition of the inmate;

(6) Providing advice as to institution guidelines governing telephone calls;

(7) Provision for personal hygiene, to include:

(i) Issue of personal hygiene items;

(ii) Issue of clean clothing; and

(iii) Opportunity for shower and hair care;

(8) Orientation; and

(9) Assignment to an appropriate housing unit.

§ 551.104 Housing.

Unless a threat is posed to institution security or good order, staff shall house pre-trial inmates separately from convicted inmates.

§ 551.105 Custody.

(a) Staff may supervise a pre-trial inmate as if classified "in" custody.

(b) Where circumstances warrant, staff may supervise a pre-trial inmate according to procedures for other custody levels.

§ 551.106 Institutional employment.

(a) The Warden may not require a pre-trial inmate to work in any assignment or area other than housekeeping tasks in the inmate's own cell and in the community living area.

(b) Unless the pre-trial inmate signs a waiver, the Warden may not permit the pre-trial inmate to work with convicted inmates or in any assignment or area other than housekeeping tasks as specified in paragraph (a) of this section.

§ 551.107 Good time.

A pre-trial inmate does not earn good time.

§ 551.108 Performance pay.

The Warden may approve a pre-trial inmate for performance pay and special awards.

§ 551.109 Community activities.

(a) The Warden may not grant a furlough to a pre-trial inmate (18 U.S.C. 4082).

(b) In an emergency, staff shall facilitate contact with the pre-trial inmate's attorney of record, who may seek from the court a decision concerning release from custody or an escorted trip.

(c) Except by order of the court, a pre-trial inmate may not be considered for participation in community programs.

§ 551.110 Religious programs.

(a) If a pre-trial inmate signs a waiver of separation, and when consistent with institution security and good order, that pre-trial inmate may participate in religious programs with convicted inmates.

(b) Staff may enlist the aid of contract or volunteer chaplaincy personnel for religious programs within the area where pre-trial inmates are confined.

§ 551.111 Marriage.

A pre-trial inmate may request permission to marry in accordance with current Bureau of Prisons policy for convicted inmates. Staff shall contact the court, U.S. Attorney, and in the case of an alien, the Immigration and Naturalization Service, to advise of the marriage request of the pre-trial inmate and to request their comments.

§ 551.112 Education.

(a) A pre-trial inmate may participate in correspondence and self-study educational courses. Institutional staff may also arrange educational assistance to the pre-trial inmate through the use of contract personnel or community volunteers.

(b) If a pre-trial inmate signs a waiver of separation, and when consistent with institution security and good order, that pre-trial inmate may have full access to the institution's educational program.

§ 551.113 Counseling.

(a) If a pre-trial inmate signs a waiver of separation, and when consistent with institution security and good order, that pre-trial inmate may receive counseling services with convicted inmates.

(b) Staff may provide or enlist the aid of contract personnel for counseling services within the area where the pre-trial inmate is confined.

§ 551.114 Medical, psychiatric, and psychological.

(a) Staff shall provide the pre-trial inmate with the same level of basic medical (including dental), psychiatric, and psychological care provided convicted inmates.

(b) Staff shall advise the court, through the U.S. Marshal, of medication the pre-trial inmate receives which may alter the inmate's courtroom behavior.

(c) In event of serious illness or death of a pre-trial inmate, staff shall notify the committing court, U.S. Marshal, U.S. Attorney's office, the inmate's attorney of record, and the designated family member or next of kin.

§ 551.115 Recreation.

(a) If a pre-trial inmate signs a waiver of separation, and when consistent with institution security and good order, that pre-trial inmate may participate with convicted inmates in recreational activities.

(b) At a minimum, staff shall provide the pre-trial inmate in regular population with the following recreational opportunities:

(1) One hour daily of outside recreation, weather permitting; or

(2) Two hours daily of indoor recreation.

(c) Staff shall make recreation equipment available to the pre-trial inmate including, but not limited to, physical exercise equipment, books, table games, and television.

(d) Provisions of paragraphs (b) and (c) of this section must be carried out unless compelling security or safety reasons dictate otherwise. Institution staff shall document these reasons.

(e) Staff shall provide the pre-trial inmate housed in Administrative Detention or Disciplinary Segregation with exercise as provided by the Bureau of Prisons rules on Inmate Discipline (See 28 CFR Part 541, Subpart B).

§ 551.116 Discipline.

(a) Staff shall require the pre-trial inmate to abide by Bureau of Prisons rules on Inmate Discipline (See 28 CFR Part 541, Subpart B), subject to the limitations of §§ 551.106(a) and 551.107.

(b) Staff shall advise the court, through the U.S. Marshal, of repeated or continuing disruptive behavior by a pre-trial inmate.

§ 551.117 Access to legal resources.

(a) The Warden shall provide the opportunity for pre-trial inmate-attorney visits on a seven-day-a-week basis.

(b) Staff shall provide pre-trial inmates with access to legal materials in the institution.

(c) Staff shall allow the pre-trial inmate, upon his request, to telephone his attorney as often as resources of the institution allow.

§ 551.118 Property.

(a) A pre-trial inmate may retain personal property as authorized for convicted inmates housed in administrative detention units (See Part 541, Subpart B).

(b) Staff may store the pre-trial inmate's unauthorized personal property until the individual is released, transferred to another facility, or sentenced and committed to a federal institution.

(c) Staff may supply the pre-trial inmate with clothing for court appearances or the inmate may supply his own.

§ 551.119 Release of funds and property of pre-trial inmates.

(a) Staff shall establish procedures which allow for the release of funds and personal property to pre-trial inmates released during other than normal business hours.

(b) Staff shall ensure that pre-trial inmates are informed of existing policy relative to the commissary account and the deposit/release of funds.

§ 551.120 Visiting.

Staff shall allow pre-trial inmates to receive visits in accordance with the Bureau's rule and local institution guidelines on visiting. Staff may allow a pre-trial inmate special visits to protect the inmate's business interests or to help prepare for trial.

PART 552—CUSTODY

Subpart A—[Reserved]

Subpart B—Searches of Housing Units, Inmates, and Inmate Work Areas

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AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

SOURCE: 45 FR 33941, May 20, 1980, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Searches of Housing Units, Inmates, and Inmate Work Areas

SOURCE: 45 FR 75134, Nov. 13, 1980, unless otherwise noted.

§ 552.10 Purpose and scope.

In order to further the safe, secure, and orderly running of its institutions, the Bureau of Prisons conducts searches of inmates and of inmate housing and work areas to locate contraband and to deter its introduction and movement. Staff shall employ the least intrusive method of search practicable, as indicated by the type of contraband and the method of suspected introduction.

§ 552.11 Body searches of inmates.

(a) Pat search—an inspection of a fully-clothed inmate, using the hands, including a search of the inmate's clothing and personal effects. A metal detector search may be done under the same circumstances.

(1) Staff may conduct a pat search of an inmate on a routine or random basis to control contraband.

(2) Ordinarily, staff of the same sex as the inmate shall make the search, except where circumstances are such that delay would mean the likely loss of contraband, or where it would be operationally inconvenient to arrange for a member of the same sex.

(b) Visual search—a visual inspection of all body surfaces and body cavities.

(1) Staff may conduct a visual search where there is reasonable belief that contraband may be concealed on the person, or a good opportunity for concealment has occured. For example, placement in a special housing unit (See Part 541, Subpart B) or re-entry into an institution after contact with the public (after a community trip or after a "contact" visit in a visiting room) is sufficient to justify a visual search. The visual search shall be made in a manner designed to assure as much privacy to the inmate as practicable.

(2) Staff of the same sex as the inmate shall make the search, except where circumstances are such that delay would mean the likely loss of contraband. Where staff of the opposite sex makes a visual search, staff shall document the reasons for the opposite sex search in the inmate's central file.

(c) Digital or simple instrument search—inspection for contraband or any other foreign item in a body cavity of an inmate by use of fingers or simple instruments, such as an otoscope, tongue blade, short nasal speculum, and simple forcep. A digital or simple instrument search may be conducted only by medical staff upon approval of the Warden and only if the Warden has reasonable belief that an inmate is concealing contraband in or on his person. If located, the contraband or foreign item may be removed immediately by medical staff if such removal can easily be effected by use of fingers or the simple instruments referred to above. Staff shall document all digital and simple instrument searches and the reasons for the searches in the inmate's central file.

(1) Staff shall solicit the inmate's written consent prior to conducting a digital or simple instrument search. However, the inmate's consent is not required.

(2) Staff may not conduct a digital or simple instrument search if it is likely to result in physical injury to the inmate.

§ 552.12 X-ray, major instrument, fluoroscope, or surgical intrusion.

(a) The institution physician may authorize use of a fluoroscope, major instrument (including anoscope or vaginal speculum), or surgical intrusion for medical reasons only, with the inmate's consent.

(b) The institution physician may authorize use of an X-ray for medical reasons and only with the consent of the inmate. When there exists no reasonable alternative, and an X-ray examination is determined necessary for the security, good order, or discipline of the institution, the Warden, upon approval of the Regional Director, may authorize the institution physician to perform a non-repetitive X-ray examination for the purpose of determining if contraband is concealed in or on the inmate (for example: in a cast or body cavity). The X-ray examination may not be performed if it is determined by the institution physician that it is likely to result in serious or lasting medical injury or harm to the inmate. Staff shall place documentation of the examination and the reasons for the examination in the inmate's central file and medical file.

(1) The Warden and Regional Director or persons officially acting in that capacity may not redelegate the authority to approve an X-ray examination for the purpose of determining if contraband is present. An Acting Warden or Acting Regional Director may, however, perform this function.

(2) Staff shall solicit the inmate's consent prior to the X-ray examination. However, the inmate's consent is not required.

(c) The Warden may direct X-rays of inanimate objects where the inmate is not exposed.

§ 552.13 Search of inmate housing and work areas.

(a) Staff may search an inmate's housing and work area, and personal items contained within those areas, without notice to or prior approval from the inmate and without the inmate's presence.

(b) Staff conducting the search shall leave the housing or work area as nearly as practicable in its original order.

Subpart C—Use of Force and Application of Physical Restraints on Inmates

Source: 47 FR 27220, June 23, 1982, unless otherwise noted.

Effective Date Note: Sections 552.20 through 552.24 (Subpart C) were added at 47 FR 27220, June 23, 1982, effective July 26, 1982.

§ 552.20 Purpose and scope.

The Bureau of Prisons authorizes application of physical restraints on an inmate who becomes violent or displays signs of imminent violence. When an inmate behaves violently or displays signs of imminently becoming violent, staff shall use only that amount of force necessary to ensure the safety of the inmate, staff, and others, and to protect government property. This rule does not restrict the use of restraints in situations requiring precautionary restraints, particularly in the movement or transfer of inmates, e.g., the use of handcuffs in moving inmates to and from a cell in detention.

§ 552.21 Use of restraints.

(a) The correctional supervisor in charge of the shift may authorize and will ordinarily supervise the application of restraints necessary to gain control of an inmate who appears to be dangerous because:

(1) The inmate assaults any person;

(2) The inmate destroys government property;

(3) The inmate attempts suicide;

(4) The inmate inflicts wounds upon self; or

(5) The inmate displays signs that such violence may be imminent.

(b) Except where the immediate use of restraints is required for control of the inmate, staff may apply restraints to, or continue the use of restraints on, an inmate while in a cell in administrative detention or disciplinary segregation only with approval of the Warden or designee. Where immediate use of restraints is indicated, staff may temporarily apply such restraints to an inmate to prevent that inmate from hurting self, staff, or others, and/or to prevent the destruction of government property. When the temporary application of restraints is determined necessary, the Warden or designee is to be notified immediately for a decision on whether the use of restraints should continue.

(c) Staff shall seek the assistance of mental health or medical staff upon gaining physical control of the inmate. Where possible, staff shall seek such assistance at the onset of the violent behavior.

(d) Where mental health or medical staff determine that an inmate requires continuing care, the deciding staff shall assume responsibility for care of the inmate, to include possible admission to the institution hospital.

(e) When it is necessary to restrain an inmate for longer than 8 hours, staff shall apply to the inmate medically acceptable restraints (ordinarily leather). The restraints may be attached to an appropriate bed, approved by medical staff. Staff shall check the inmate at least every 30 minutes, both to ensure that the restraints are not hampering circulation and for the general welfare of the inmate. When an inmate is restrained to a bed, staff shall periodically rotate the inmate's position to avoid soreness or stiffness.

(f) Except as stated in paragraph (e) of this section, staff may not secure an inmate to a fixed object, such as a cell door or grill work.

§ 552.22 Use of force.

Staff shall use only that force necessary to gain control of the inmate. Staff shall apply restraints (for example, handcuffs) to the inmate who continues to resist after staff achieve physical control of that inmate. If, after being controlled or restrained, the inmate refuses to move to another area on his own, staff may physically move that inmate by lifting and carrying the inmate to the appropriate destination.

§ 552.23 Use of chemical agents.

The Warden may authorize the use of chemical agents only when the situation is such that the:

(a) Inmate is armed and/or barricaded; or

(b) Cannot be approached without danger to self or others; and

(c) It is determined that a delay in bringing the situation under control would constitute a serious hazard to the inmate, others, or result in a major disturbance or major property damage.

§ 552.24 Documentation.

Staff shall document in writing all incidents involving the use of force or chemical agents. Staff shall also document in writing the use of restraints on an inmate who becomes violent or displays signs of imminent violence. A copy of the report shall be placed in the inmate's central file.

Subpart D—Hostages

§ 552.30 Purpose and scope.

The Warden of each institution has the authority to resolve a situation in which a hostage is taken in the institution. Staff's primary objectives in these situations are to safely free the hostage and to regain control of the institution.

§ 552.31 Negotiations.

(a) The Warden is not normally directly involved in negotiations, generally assigning this responsibility to another individual.

(b) A person assigned as negotiator has no decision-making authority but acts as an intermediary.

(c) A person assigned as negotiator shall attempt to keep communications open at all times with the captors.

§ 552.32 Hostages—no authority.

Captive staff have no authority, and their directives shall be disregarded.

§ 552.33 Non-negotiable items.

The following items are non-negotiable:

(a) Release of captors from custody;

(b) Immunity from prosecution.

§ 552.34 Notifications.

(a) The Warden shall assign staff to handle all news releases and news media inquires in accordance with the rule on Contract with News Media (see 28 CFR 540.65).

(b) The Warden shall arrange to have the family members of the hostages notified as soon as practical after the incident occurs.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 570—COMMUNITY PROGRAMS

Subparts A—[Reserved]

Subpart B—Work/Study Release

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Subpart A—[Reserved]

Subpart B—Work/Study Release

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Source: 45 FR 75735, Nov. 13, 1980, unless otherwise noted.

§ 570.10 Purpose and scope.

The Bureau of Prisons uses Work and Study Release programs to allow selected inmates, in preparation for release from confinement, to attend school or to work in the local community during the day, returning to the institution at night.

(a) An inmate may not work as a strikebreaker or under working conditions at less than acceptable minimum standards, or in any other situation which, in the Warden's judgment and discretion, could evoke adverse public response towards the inmate, the Bureau of Prisons, or the government.

(b) Under 18 U.S.C. 4082(c)(2), the Attorney General may require a participant in a community work program to pay appropriate and reasonable costs incidental to the inmate's confinement.

[47 FR 9756, Mar. 5, 1982]

§ 570.11 Definitions.

The term "Work and Study Release" means an inmate's authorized absence from a federal institution for the purpose of employment or to participate in an academic or vocational education activity.

[47 FR 9756, Mar. 5, 1982]

§ 570.12 Administration.

(a) Except as provided in § 570.16, the Warden may approve an inmate's placement for Work or Study Release, or may remove the inmate from such participation. The Warden may not further delegate this authority.

(b) An inmate participant in a community program remains in the custody of the Attorney General. The Warden shall credit time during which an inmate participates in a community program toward service of the inmate's sentence. The Warden shall process an inmate who absconds from a community placement as an escaped federal prisoner. The Warden may subject an inmate who violates the conditions of a community program to disciplinary action as provided in Part 541, Subpart B.

§ 570.13 Program participation.

The Warden may consider an inmate for placement in a Work or Study Release program under the following procedure and conditions:

(a) The inmate makes written application for placement;

(b) The inmate has community custody status;

(c) The Warden determines that the inmate is physically and mentally capable of performing the proposed work or study;

(d) The Warden determines that the inmate has demonstrated a level of responsibility which provides reasonable assurance that the inmate will comply with the requirements of a placement;

(e) The Warden finds the proposed placement appropriate under this subpart; and

(f) The Warden verifies the conditions of the proposed placement.

§ 570.14 Limitations to program participation.

(a) Except as provided in paragraph (b) of this section, the Warden may not consider for placement in a Work or Study Release program:

(1) An inmate who will not be within 6 months of a probable date of release from confinement at the time of the program placement;

(2) An inmate who is to be transferred to a community program facility, such as a community treatment center or work release facility, in the inmate's area of release;

(3) An inmate who has a history of violent or assaultive behavior; or

(4) An inmate convicted of an offense which involved a violation of financial trust.

(b) When the Warden determines that an inmate needs a Work or Study Release program placement and that the community will not be endangered thereby, the Warden may make an exception to any of the limitations in paragraph (a) of this section.

(c) An inmate may not participate in Study Release on a full-time basis in excess of one academic year without the approval of the Warden and Regional Director.

§ 570.15 Transfers.

When an institution does not have a Work/Study Release program, the Warden may recommend an inmate for transfer to another institution which does operate a Work/Study Release program, provided all other eligibility requirements for transfer are met.

§ 570.16 Cases requiring special approval.

(a) An inmate convicted of a serious crime against persons, and whose presence in the community could attract undue public attention, create unusual concern, or depreciate the seriousness of the offense, must have approval of the Regional Director prior to participation in Work or Study Release.

(b) An inmate tentatively designated or confirmed as a Central Monitoring Case must have approval as authorized in the Bureau of Prisons rule on Central Inmate Monitoring Cases in order to participate in a Work or Study Release program.

§ 570.17 Transportation and subsistence.

(a) All transportation arrangements require approval of the Warden. An inmate shall use and pay for commerical transportation to and from the program placement. Other arrangements for transportation to and from the program placement require prior approval of the Warden.

(b) Under 18 U.S.C. 4082(c)(2), "* * * A prisoner authorized to work at paid employment in the community under this subsection may be required to pay, and the Attorney General is authorized to collect, such costs incident to the prisoner's confinement as the Attorney General deems appropriate and reasonable. Collections shall be deposited in the Treasury of the United States as miscellaneous receipts."

(1) A fully employed participant in a community work program shall pay a fixed charge of $2.00 per calendar day in reimbursement for services and supplies ordinarily made available to inmates of federal institutions. The reimbursement contributes to the cost of services and supplies, such as lodging, meals taken at the residential facility, clothing, bedding, laundry, allowances and medical care, but excludes transportation to and from the inmates's place of work. The Warden shall require the inmate to sign an earnings agreement which incorporates maintenance payments at the specified rate.

(2) No charge is made during the inmate's first thirty calendar days of community employment.

(c) The Warden may waive transportation costs under paragraph (a) of this section when the Warden determines that the costs would unduly burden the inmate financially. Waivers of transportation requirements shall be documented.

(d) The Warden may waive the fixed charge under paragraph (b) of this section for an inmate after the first thirty days when the inmate:

(1) Is unemployed;

(2) Has less than full-time employment (40 hour work week);

(3) Has a verified serious need of financial assistance to the inmate's immediate family;

(4) Has a verified serious need of his own: For example, savings required for establishment of residence; specialized employment requirements (training, education, automobile, etc.); or

(5) For any other compelling reason recommended by the Warden and approved by the Regional Director or designee.

Waivers of fixed charge requirements shall be documented.

(e) An inmate may not reimburse the Government for expenses of Work or Study Release except as provided in paragraphs (a) and (b) of this section.

[47 FR 9756, Mar. 5, 1982]

§ 570.18 Clothing.

The Warden shall provide an inmate who is approved for Work or Study Release placement with appropriate attire for the placement. The inmate may purchase supplemental or replacement clothing with personal funds through regular institutional commissary procedures or directly from outside commercial sources. The inmate may not wear clothing acquired through the program placement inside the institution unless authorized by the Warden to do so. The Warden shall make special arrangements for an inmate to have access to a locker and change of clothing.

§ 570.19 Expenses.

(a) The inmate, the inmate's family, or other sources approved by the Warden shall bear all expenses incidental to a Work or Study Release program, such as the cost of meals in the community, laundry fees for clothing, cost of special equipment, etc.

(b) An inmate who has sufficient personal financial resources shall bear the cost of the inmate's Study Release program. The Bureau of Prisons may participate in payment for educational courses which lead directly to the development or increase of a viable occupational skill in accordance with the provisions of the Bureau of Prisons rule on Postsecondary Education Programs for Inmates.

[47 FR 9756, Mar. 5, 1982]

§ 570.20 Supervision of an inmate on Work or Study Release.

Staff shall monitor an inmate on a Work or Study Release placement to ensure the appropriateness of the placement and to assess the performance of the inmate.

§ 570.21 Guidance and counseling.

Staff shall make guidance and counseling services available to a Work/Study Release inmate.

§ 570.22 Work/study Release good time.

Extra good time for an inmate in work or study release programs is awarded automatically, beginning on the date the inmate is assigned to the program and continuing without further approval as long as the inmate is participating in the program, unless the award is disallowed.

§ 570.23 Termination.

The Warden in his/her discretion may terminate an inmate's participation in a Work or Study Release program for any of the following causes:

(a) Completion of the program by the inmate;

(b) The inmate's misconduct or willful negligence;

(c) Cancellation of a placement for reasons beyond the inmate's control, e.g., budget cutbacks, job layoffs, etc.; or

(d) Other sound correctional reasons, documented in the record.

[47 FR 9756, Mar. 5, 1982]

§ 570.24 Compensation for injury.

The Federal Government assumes no responsibility for injury received by an inmate on Work or Study Release. However, the Government shall provide needed medical treatment so long as the inmate remains in the custody of the Attorney General.

Subpart C—Furloughs

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 751, 4001, 4042, 4081, 4082, 5006-5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

SOURCE: 46 FR 34552, July 1, 1981, unless otherwise noted.

§ 570.30 Purpose and scope.

The Attorney General of the United States has delegated the authority to grant furloughs under 18 U.S.C. 4082(c) to the Director, Bureau of Prisons (28 CFR 0.96(d)). The furlough program of the Bureau of Prisons is intended to help the inmate to attain correctional goals. A furlough is not a right, but a privilege granted an inmate under prescribed conditions. It is not a reward for good behavior, nor a means to shorten a criminal sentence.

§ 570.31 Definitions.

(a) A furlough is an authorized absence from an institution by an inmate who is not on a work/study release program nor under escort of a staff member or a U.S. Marshal. The two types of furloughs are:

(1) Day Furlough—A furlough within the geographic limits of the commuting area of the institution (approximately a 50-mile radius), which lasts 16 hours or less, and ends before midnight.

(2) Overnight Furlough—A furlough which falls outside or beyond the criteria of a day furlough.

(b) An anticipated release date, for purposes of this rule, refers to the first of the following dates which applies to an inmate requesting a furlough:

(1) The inmate's mandatory (statutory) release date;

(2) The inmate's minimum expiration date;

(3) The inmate's presumptive parole date;

(4) The inmate's effective parole date; or

(5) In the absence of a presumptive or effective parole date, the top of the range of months to be served for the inmate's specific offense and salient factor score, using the U.S. Parole Commission guidelines.

§ 570.32 Justification for furlough.

(a) The authority to approve furloughs in Bureau of Prisons institutions is delegated to the Warden or Acting Warden. This authority may not be further delegated. An inmate may be authorized a furlough:

(1) To be present during a crisis in the immediate family, or in other urgent situations;

(2) To participate in the development of release plans;

(3) To reestablish family and community ties;

(4) To participate in selected educational, social, civic, religious, and recreational activities which will facilitate release transition;

(5) To transfer directly to another institution or to a non-federal facility;

(6) To appear in court in connection with a civil action;

(7) To comply with an official request to appear before a grand jury, or to comply with a request from a legislative body or regulatory or licensing agency; or

(8) To appear in a criminal court proceeding, but only when the use of a furlough is requested or recommended by the applicable court or prosecuting attorney.

(b) The Warden may recommend a furlough for an inmate to obtain necessary medical, surgical, or dental treatment not otherwise available. In addition to the recommendation of the Warden, a furlough of this nature requires the recommendation of the Chief Medical Officer (Chief of Health Programs). Approval for a furlough of this type occurs in one of the following ways:

(1) Staff shall contact the Regional Office for approval when the cost of medical care is at the expense of the government. In case of medical emergency, staff may authorize a furlough for hospitalization and shall notify the Regional Office as soon after the emergency admission as possible.

(2) When medical care expenditures are borne by the inmate, or other non-governmental source, the furlough request requires the approval of the Medical Director and the Assistant Director, Correctional Programs Division.

(c) The Warden may refer a request for a furlough in other situations through the Regional Director to the Assistant Director, Correctional Programs Division for approval.

§ 570.33 Expenses of furlough.

(a) Except as provided in paragraph (b) of this section, the inmate or the inmate's family or other appropriate source approved by the Warden shall bear all expenses of a furlough, including transportation, food, lodging, and incidentals.

(b) The government may bear the expense of a furlough only when the purpose of the furlough is to obtain necessary medical, surgical, or dental treatment not otherwise available, or to transfer an inmate to another correctional institution (includes community treatment centers).

§ 570.34 Eligibility requirements.

(a) Except as provided in paragraph (b) of this section, the Warden may grant a furlough only to an inmate with community custody.

(b) The Warden may grant a furlough to an inmate with "out" custody only when the furlough is for the purpose of transferring directly to another institution or camp.

(c) The Warden may grant a furlough only to an inmate the Warden determines to be physically and mentally capable of completing the furlough.

(d) The Warden may grant a furlough only to an inmate who has demonstrated sufficient responsibility to provide reasonable assurance that furlough requirements will be met.

(e) The Warden shall determine the eligibility of an inmate for furlough in accord with the inmate's anticipated release date and the basis for the furlough request.

(1) The Warden may approve only emergency furloughs (family crisis or other urgent situation) for an inmate with more than two years remaining until the inmate's anticipated release date.

(2) The Warden may approve for day furlough an inmate with two years or less remaining until the inmate's anticipated release date.

(3) The Warden may approve for overnight furlough within the institution's commuting area an inmate with 18 months or less remaining until the inmate's anticipated release date.

(4) The Warden may approve for an overnight furlough outside the institution's commuting area an inmate with one year or less remaining until the inmate's anticipated release date. The Warden may ordinarily approve an overnight furlough not to exceed once each 90 days.

(5) If the Warden approves a furlough outside the above guidelines, the Warden shall document the reasons by memorandum for placement in the inmate's central file.

§ 570.35 Limitations on eligibility.

(a) The Warden ordinarily may not grant a furlough to an inmate convicted of a serious crime against the person and/or whose presence in the community could attract undue public attention, create unusual concern, or depreciate the seriousness of the offense. If the Warden approves a furlough for such an inmate, the Warden must place a statement of the reasons for this action in the inmate's central file.

(b) The Warden may approve a furlough for an inmate classified a central monitoring case upon compliance with the requirements of this rule and the requirements of Part 524, Subpart F.

(c) Staff at a contract facility may approve a furlough for a sentenced inmate housed in the contract facility as specified in that facility's written agreement with the Bureau of Prisons.

§ 570.36 Procedures.

(a) An inmate who meets the eligibility requirements of this rule may submit to staff an application for furlough.

(b) Before approving the application, staff shall verify that a furlough is indicated.

(c) Staff shall notify an inmate of the decision on the inmate's application for furlough. Where an application for furlough is denied, staff shall notify the inmate of the reasons for denial.

(d) An inmate returning from furlough shall be subject to search as provided in the Bureau's rule on searches of inmates.

(e) Upon completion of an inmate's furlough, staff shall record in the inmate's central file anything unusual which occurred during the furlough.

§ 570.37 Violation of furlough.

An inmate who absconds from furlough or fails to meet any of the conditions of the furlough is deemed to be an escapee under federal law, 18 U.S.C. 4082, 751.

(1) Staff shall process as an escapee an inmate who absconds from furlough.

(2) Staff may take disciplinary action against an inmate who fails to comply with any of the conditions of the furlough.

PART 571—RELEASE FROM CUSTODY

Subpart A—[Reserved]

Subpart B—Pre-Release Program

Sec.
571.10 Purpose and scope.
571.11 Program responsibility.
571.12 General characteristics.

Subpart C—Release Gratuities

571.20 Purpose and scope.
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Subpart D—Discharge of Inmates Under 18 U.S.C. 4163

571.30 Procedures.

Subpart E—Petitions for Commutation of Sentence

571.40 Purpose and scope.
571.41 Procedures.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 4201-4218, 5006-5024, 5031-5042; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

SOURCE: 44 FR 38254, June 29, 1979, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Pre-Release Program

SOURCE: 45 FR 44234, June 30, 1980, unless otherwise noted.

§ 571.10 Purpose and scope.

The Bureau of Prisons recognizes that an inmate's preparation for release begins as soon as the inmate is committed to the institution. The Warden shall provide a pre-release program at both the institution and unit levels to prepare an inmate for return to the community.

§ 571.11 Program responsibility.

(a) The Warden shall delegate to a staff member the responsibility to:

(1) Coordinate the pre-release program for the entire institution;

(2) Establish outlines of inmate need areas; and

(3) Contact and schedule volunteers from the local community.

§ 571.12 General characteristics.

(a) Staff shall structure the pre-release program to make extensive use of staff, inmate, and community resources.

(b) Staff shall strongly encourage and support an inmate's participation in a pre-release program. Staff may require an inmate to participate in a specific number of pre-release sessions with other sessions on a voluntary basis. Staff shall document the inmate's participation in the pre-release program in the inmate's central file.

(c) To assist in the release process, the Warden may, in accordance with the Bureau of Prisons' rules on furloughs, grant a furlough for release preparation purposes to an inmate.

(d) Staff shall help an inmate obtain proper identification (social security card, driver's license, birth certificate, and/or any other documents needed by the inmate) prior to release.

Subpart C—Release Gratuities

§ 571.20 Purpose and scope.

When an inmate is released, it is the policy of the Bureau of Prisons that the inmate possess funds to care for himself in the community until the inmate begins to receive an income. 18 U.S.C. 4281 provides for a discretionary gratuity of up to $100 per inmate for this purpose.

§ 571.21 Procedures.

(a) An inmate is eligible for a gratuity as determined by the availability of personal and community resources. The Warden may give greater consideration to an inmate without funds or community resources.

(b) A federal prisoner boarded in a nonfederal facility is eligible for a release gratuity. The director of the nonfederal facility housing federal inmates or the community programs officer shall determine the amount of the release gratuity up to $100 for federal inmates housed in nonfederal facilities.

(c) The inmate who is without personal funds may receive a gratuity when transferred to a contract halfway house. The amount shall enable the inmate to care for needs in transit and allow for the purchase of necessary personal items upon arrival.

(d) Staff shall provide the inmate released to a detainer with information on how to apply for a gratuity if released prior to expiration of the federal sentence.

(e) The Warden shall insure that each alien released to immigration authorities has $10 cash. This provision does not apply to aliens serving 60 days or less in contract facilities.

[45 FR 44234, June 30, 1980, as amended at 46 FR 59509, Dec. 4, 1981]

§ 571.22 Release clothing.

(a) Staff shall provide work clothes at the time of release to the inmate who requests them. The nonavailability of work clothes may limit this practice.

(b) The institution staff shall provide the inmate transferred to a Community Treatment Center or Work Release with appropriate clothing for the time of year and the inmate's geographical destination.

Subpart D—Discharge of Inmates Under 18 U.S.C. 4163

§ 571.30 Procedures.

(a) Pursuant to 18 U.S.C. 4163, the Bureau of Prisons releases an inmate whose release date falls on a Saturday, Sunday, or holiday, on the preceding regular work day, unless it is necessary to detain the inmate for another jurisdiction seeking custody under a detainer or for any other reason which might indicate that the inmate should not be released until the inmate's normal release date.

(b) The number of days used under 18 U.S.C. 4163 may not be added to the number of days remaining to be served to release an inmate "as if . . . on parole" (18 U.S.C. 4164) who would otherwise have been released by expiration of sentence.

Subpart E—Petitions for Commutation of Sentence

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5006-5024, 5039; 28 U.S.C. 509, 510; U.S. Const., Art. II, Sec. 2; 28 CFR 0.95-0.99, 1.1-1.9.

SOURCE: 47 FR 9756, Mar. 5, 1982, unless otherwise noted.

§ 571.40 Purpose and scope.

An inmate may file a petition for commutation of sentence in accordance with the provisions of 28 CFR Part 1.

(a) An inmate may request from the inmate's case manager the appropriate forms (and instructions) for filing a petition for commutation of sentence.

(b) When specifically requested by the U.S. Pardon Attorney, the Director, Bureau of Prisons will forward a recommendation on the inmate's petition for commutation of sentence.

§ 571.41 Procedures.

(a) Staff shall suggest that an inmate who wishes to submit a petition for commutation of sentence do so through the Warden to the U.S. Pardon Attorney. This procedure allows institution staff to forward with the application the necessary supplemental information (for example, sentencing information, presentence report, progress report, pertinent medical records if the petition involves the inmate's health, etc.). Except as provided in paragraph (b) of this section, no Bureau of Prisons recommendation is to be forwarded with the package of material submitted to the U.S. Pardon Attorney.

(b) When specifically requested by the U.S. Pardon Attorney, the Director, Bureau of Prisons shall submit a recommendation on the petition. Prior to making a recommendation, the Director may request comments from the Warden at the institution where the inmate is confined. Upon review of those comments, the Director will forward a recommendation on the petition to the U.S. Pardon Attorney.

(c) When a petition for commutation of sentence is granted by the President of the United States, the U.S. Pardon Attorney will forward the original of the signed and sealed warrant of clemency evidencing the President's action to the Warden at the detaining institution, with a copy to the Director, Bureau of Prisons. The Warden shall deliver the original warrant to the affected inmate, and obtain a signed receipt for return to the U.S. Pardon Attorney. The Warden shall take such action as is indicated in the warrant of clemency.

(1) If immediate parole eligibility is granted, the inmate is to be placed on the next parole docket.

(2) If a petition for commutation of sentence is granted, institutional staff shall recalculate the inmate's sentence in accordance with the terms of the commutation order.

(d) When a petition for commutation of sentence is denied, the U.S. Pardon Attorney ordinarily notifies the Warden, requesting that the Warden notify the inmate of the denial.

PART 572—PAROLE

Subparts A-C—[Reserved]

Subpart D—Parole and Mandatory Release Violator Reports

Sec.

572.30 Purpose and scope.
572.31 Procedures.

Subpart E—Parole Commission and Reorganization Act—Procedures for the Implementation of Section 4205(g)

Sec.

572.40 Purpose and scope.
572.41 Initiation of request.
572.42 Approval of request.
572.43 Denial of request.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95—0.99, unless otherwise noted.

SOURCE: 45 FR 23366, Apr. 4, 1980, unless otherwise noted.

Subparts A-C—[Reserved]

Subpart D—Parole and Mandatory Release Violator Reports

§ 572.30 Purpose and scope.

The Bureau of Prisons provides the United States Parole Commission with a Violator Report for use at the revocation hearing of a parole or mandatory release violator, when that hearing is conducted in an institution of the Bureau of Prisons.

(5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4205, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95—0.99)

[45 FR 33941, May 20, 1980]

§ 572.31 Procedures.

Staff shall prepare the Violator Report to include the following information:

(a) The inmate's original offense, sentence imposed, date and district;

(b) Description of release procedure;

(c) Alleged violation(s) of parole or mandatory release;

(d) Inmate's comments concerning the alleged violation(s);

(e) An outline of the inmate's activities while under supervison on parole or mandatory release; and

(f) At the option of the inmate, statement of current release plans and available community resources.

(5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4205, 5015, 5039; 23 U.S.C. 509, 510; 28 CFR 0.95—0.99)

[45 FR 33941, May 20, 1980]

Subpart E—Parole Commission and Reorganization Act—Procedures for the Implementation of Section 4205(g)

§ 572.40 Purpose and scope.

Under 18 U.S.C. 4205(g), a sentencing court, on motion of the Bureau of Prisons, may make an inmate immediately eligible for parole by reducing the minimum term of the sentence to time served. The Bureau utilizes Section 4205(g) only in particularly meritorious or unusual circumstances which could not reasonably have been foreseen by the court at the time of sentencing. The section may be used, for example, if there is an extraordinary change in an inmate's personal or family situation or if an inmate becomes severely ill.

§ 572.41 Initiation of request.

(a) An inmate may submit a written request for a motion under 18 U.S.C. 4205(g) to the Warden. In the request, the inmate shall relate the circumstances that the inmate believes warrant consideration under 18 U.S.C. 4205(g). In addition, the inmate shall include the following information in the request:

(1) Offense;

(2) Plea;

(3) Length and date of sentence;

(4) Name and location of sentencing court;

(5) Date service of sentence began;

(6) Parole eligibility date; and

(7) Mandatory release date.

(b) The Bureau of Prisons processes a request made by another person on behalf of an inmate in the same manner as an inmate's request. Staff shall refer a request received at the Central Office or at a Regional Office to the Warden of the institution where the inmate is confined.

§ 572.42 Approval of request.

(a) The Bureau of Prisons makes a motion under 18 U.S.C. 4205(g) only after review of the request by the Warden, the Regional Director, the General Counsel, the Medical Director or the Assistant Director, Correctional Programs Division, and with the approval of the Director, Bureau of Prisons.

(1) If the Warden upon an investigation of the inmate's request determines that the request warrants approval, the Warden shall refer the matter in writing with recommendation to the Regional Director.

(2) If the Regional Director determines that the request warrants approval, the Regional Director shall prepare a written recommendation and refer the matter to the Office of General Counsel.

(3) If the General Counsel determines that the request warrants approval, the General Counsel shall solicit the opinion of either the Medical Director or the Assistant Director, Correctional Programs Division depending upon the nature of the basis for the request. With this opinion, the General Counsel shall forward the entire matter to the Director, Bureau of Prisons, for final decision.

(4) If the Director, Bureau of Prisons, grants a request, the Director shall ask the U.S. Attorney in the district in which the inmate was sentenced to move the sentencing court on behalf of the Bureau of Prisons to reduce the minimum term of the inmate's sentence to time served.

(b) Upon receipt of notice that the sentencing court has entered an order granting the motion under 18 U.S.C. 4205(g), the Warden of the institution where the inmate is confined shall schedule the inmate for hearing on the earliest Parole Commission docket.

(c) In event of medical emergency certified by the physician of the institution where the inmate is confined, staff shall expedite the request at all levels.

§ 572.43 Denial of request.

(a) When an inmate's request is denied by the Warden or Regional Director, the Warden or Regional Director shall provide the inmate with a written notice and statement of reasons for the denial. The inmate may appeal the denial through the Administrative Remedy Procedure (Part 542, Subpart B).

(b) When an inmate's request for consideration under 18 U.S.C. 4205(g) is denied by the General Counsel, the General Counsel shall provide the inmate with a written notice and statement of reasons for the denial. This denial constitutes a final administrative decision.

(c) When the Director, Bureau of Prisons, denies a request, the Director shall provide the inmate with a written notice and statement of reasons within 20 workdays after receipt of the referral from the Office of General Counsel. A denial by the Director constitutes a final administrative decision.

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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The Director of the Federal Register approves the following incorporations by reference effective July 1, 1982, unless otherwise noted (5 U.S.C. 552(a) and 1 CFR Part 51). For more information on incorporation by reference, see the preliminary pages of this volume.

28 CFR CHAPTER I (PARTS 0 TO 199)
DEPARTMENT OF JUSTICE

	28 CFR
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1430 Broadway, New York, NY 10018	
ANSI A117.1–61 (R 71) Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped.	42.522

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List of CFR Sections Affected

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[1] Chapter II was deleted automatically June 30, 1973, due to failure of Congress to appropriate funds for continuance of the Subversive Activities Control Board.

NOTE: Asterisk (*) identifies changes published in 1974.

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NOTE: Asterisk (*) identifies changes published in 1974.

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Note: Asterisk (*) identifies changes published in 1974.

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